



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



In the matter of:
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Applicant for Security Clearance)

ISCR Case No. 24-01166

Appearances

For Government:
Andrew Henderson, Esquire, Department Counsel

For Applicant:
Pro se

05/20/2025

Decision

CEFOLA, Richard A., Administrative Judge:

On July 20, 2023, Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP). On December 19, 2024, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines J (Criminal Conduct), H (Drug Involvement and Substance Misuse), and E (Personal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review*

Program (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines effective June 8, 2017.

Applicant answered the SOR in writing on December 26, 2024, and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) received the request soon thereafter. I received the case assignment on March 10, 2025. DOHA issued a Notice of Hearing on March 11, 2025, and I convened the hearing as scheduled on April 15, 2025. The Government offered Exhibits (GXs) 1 through 6, which were received without objection. Applicant testified and submitted Exhibits (AppXs) A through C, which were received without objection. He also asked that the record be kept open until May 15, 2025, for the receipt of additional documentation. On April 15, 2025, Applicant also submitted AppXs D and E, which were admitted without objection. DOHA received the transcript of the hearing (TR) on April 25, 2025. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR Applicant admitted the factual allegations in Paragraph 1 of the SOR, with explanations, but denied the factual allegations in Paragraphs 2 and 3 of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 32 years old, unmarried, and has no children. He works for a defense contractor. (TR at page 15 lines 15~17, page 21 line 9 to page 23 line 22, and GX 1 at pages 5 and 15~17.) Applicant served in the U.S Marine Corps from September 5, 2012, until he was adjudged a Bad Conduct Discharge on December 12, 2018. (GX 3, and AppX B.) Applicant's Facility Security Officer (FSO) testified on his behalf. (TR at page 15 line 1 to page 19 line 20.)

Guideline J - Criminal Conduct & Guideline H – Drug Involvement

1.a. and 2.a. Applicant admits that in April of 2017, he pled guilty at a General Court-Martial to possession of a controlled substance, and to conspiracy. As a result of this conviction, Applicant was sentenced to 13 months confinement, reduced in rank to Private (E-1), and received a Bad Conduct Discharge from the U.S. Marine Corps. (TR at page 27 line 14 to page 37 line 13, and GX 3, GX 4 at pages 2~3, and GX 6 at pages 1~2.)

Guideline E - Personal Conduct

3.a. On Applicant's July 20, 2023, e-QIP, he answered, "contract ended," to "Section 13A – Employment Activities #9. United States Marine Corps Reason for Leaving Question," (TR at page 37 line 9 to page 39 line 9, and GX 1 at page 16.) I find this to be a willful falsification, as Applicant left the Marine Corps as the result of a Bad Conduct Discharge, as noted above.

3.b. On Applicant's July 20, 2023, e-QIP, he answered, "No," to "Section 15 – Military History . . . were you discharged from" the Marine Corps. (TR at page 39 line 14 to page 40 line 13, and GX 1 at page 17.) I find this to be a willful falsification, as Applicant left the Marine Corps as the result of a Bad Conduct Discharge, as noted above.

3.c. On Applicant's July 20, 2023, e-QIP, he answered, "No," to "Section 15 – Military History Discipline In the past seven (7) years, have you been subject to court martial." (TR at page 40 line 15 to page 43 line 15, and GX 1 at page 18.) I find this to be a willful falsification, as Applicant was tried by a General Court-Martial, in April of 2017, less than seven years prior to him executing his e-QIP, as noted above.

3.d. On Applicant's July 20, 2023, e-QIP, he answered, "No," to "Section 22 – Police Record . . . In the past seven (7) years have you been charged, convicted, or sentenced of a crime in any court?" (TR at page 43 line 16 to page 44 line 7, and GX 1 at page 27.) I find this to be a willful falsification, as Applicant was charged, convicted, and sentenced by a General Court-Martial, in April of 2017, less than seven years prior to him executing his e-QIP, as noted above.

3.e. On Applicant's July 20, 2023, e-QIP, he answered, "No," to "Section 22 – Police Record (EVER) . . . Have you EVER been convicted in any court of the United States of a crime, sentenced to imprisonment for a term exceeding 1 year for that crime, and incarcerated as a result of that sentence for not less than 1 year? (Include all qualifying convictions in . . . military court . . .)." Applicant also answered, "No," to "Have you EVER been charged with an offense involving . . . drugs?" I find these to be willful falsifications, as Applicant was sentenced to 13 months confinement for possession of a controlled substance, as noted above.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 AG ¶ 2 describing 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 avoided drawing 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that 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 J - Criminal Conduct

The security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

The guideline at AG ¶ 31 contains five disqualifying conditions that could raise a security concern and may be disqualifying. Three conditions apply, as discussed below:

- (a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness;
- (b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted; and
- (e) discharge or dismissal from the Armed Forces for reasons less than "Honorable."

Applicant has been convicted of possession of a controlled substance by a General Court-Martial and received a Bad Conduct Discharge from the Marine Corps. This evidence raises security concerns under these disqualifying conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline in AG ¶ 32 contains two conditions that could mitigate criminal conduct security concerns:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Sufficient time has passed, over eight years, since Applicant's April 2017, drug conviction. The evidence does establish mitigation under the above conditions. Criminal Conduct is found for Applicant.

Guideline H - Drug Involvement and Substance Misuse

The security concern relating to the guideline for Drug Involvement and Substance Misuse is set forth at 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 at AG ¶ 25 contains seven conditions that could raise a security concern and may be disqualifying. Two conditions are established:

(a) any substance misuse (see above definition); and

(c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant was involved with controlled substances in 2017. Therefore, AG ¶ 25 (a), and (c) are established.

The guideline at AG ¶ 26 contains four conditions that could mitigate security concerns. One condition may be 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.

Again, Applicant's drug involvement was more than eight years ago. Drug Involvement and Substance Misuse is found for Applicant.

Guideline E - Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

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 will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

- (a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and
- (b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. One is potentially applicable in this case:

- (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 repeatedly falsified his July 2023 e-QIP. The evidence is sufficient to raise this disqualifying condition. I find no countervailing mitigating condition. Throughout his hearing, Applicant appeared to be “in denial” regarding his clear and repeated falsifications. Personal Conduct is found against Applicant.

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 an applicant's conduct and all the 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.

AG ¶ 2(b) requires each case must be judged on its own merits. 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. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his Personal Conduct.

Formal Findings

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

Paragraph 1, Guideline J: **FOR APPLICANT**

Subparagraph 1.a: **For Applicant**

Paragraph 2, Guideline H: **FOR APPLICANT**

Subparagraph 2.a: **For Applicant**

Paragraph 3, Guideline E: **AGAINST APPLICANT**

Subparagraphs 3.a~3.e: **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 national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Richard A. Cefola
Administrative Judge