



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



## **Appearances**

For Government: Tara Karoian, Esq., Department Counsel  
For Applicant: *Pro se*

04/16/2025

## Decision

COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline E, personal conduct. Applicant's eligibility for a security clearance is denied.

## **History of the Case**

On April 26, 2024, the Defense Counterintelligence and Security Agency (DCSA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline E. The DCSA acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (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 June 8, 2017.

Applicant answered the SOR and requested a hearing. The case was assigned to me on December 6, 2024. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 10, 2025, and the hearing was held as scheduled on February 19, 2025. The Government offered exhibits (GE) 1 through 5 and 7, which were admitted into evidence without objection. Applicant objected to GE 6, but I overruled that

objection, and it was admitted into the record. The Government's exhibit list and pre-hearing discovery letter were marked as hearing exhibits (HE) I and II. Applicant testified, but he did not offer any exhibits. DOHA received the hearing transcript (Tr.) on February 28, 2025.

### **Findings of Fact**

Applicant admitted SOR allegations ¶¶ 1.a-1.i, and he denied ¶¶ 1.j-1.m. His admissions are adopted as 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 31 years old. In December 2022, he graduated from college with a bachelor's degree. He is single, has never married, and has one child, age five. He has worked as an engineer for his current employer, a defense contractor, since January 2023. He first completed a security clearance application (SCA) in May 2023, several months after he began his employment. (Tr. 6, 26-27, 35 GE 1)

Under Guideline E, the SOR alleged:

1. Applicant was charged with retail theft in October 2011, which charge was *nolle prossed* (SOR ¶ 1.a);
2. Applicant was charged with a minor in possession of alcohol in February 2012, which charge was *nolle prossed* (SOR ¶ 1.b);
3. Applicant was charged with disorderly conduct in July 2014 (SOR ¶ 1.c);
4. Applicant used marijuana between 2008 and 2009, and again in July 2020 (SOR ¶ 1.d);
5. Applicant used Adderall, without a lawful prescription, at various times, between February and May 2021 (SOR ¶ 1.e);
6. Applicant was charged in November 2021, and convicted of driving with a suspended, denied, canceled, or revoked driver's license (SOR ¶ 1.f);
7. Applicant was charged in June 2022, with driving with a suspended, denied, canceled, or revoked driver's license (SOR ¶ 1.g);
8. Applicant was charged in September 2022, with assault causing bodily injury, which was pleaded down to disorderly conduct—fighting/violent behavior (SOR ¶ 1.h);
9. Applicant was charged in September 2022, with driving with a suspended, denied, canceled, or revoked driver's license (SOR ¶ 1.i);

10. Applicant falsified his May 2023 SCA when he failed to disclose his arrests, as listed in SOR ¶¶ 1.f-1.i, and when he failed to disclose his marijuana and Adderall use, as described in SOR ¶¶ 1.d-1.e above (SOR ¶¶ 1.j-1.k);
11. Applicant gave false answers to an investigator in July 2023 during his background interview (BI), when he failed to disclose his criminal record, as stated above in SOR ¶¶ 1.f-1.i (SOR ¶ 1.l); and
12. Applicant gave a false answer in April 2024, in response to Government interrogatories when he denied using marijuana, a drug illegal under federal law. (SOR ¶ 1.m).

During Applicant's hearing testimony, he admitted all the allegations stemming from his criminal charges and marijuana and Adderall use, as he had in his SOR answer. The factual information concerning these arrests, and his drug use is summarized below:

**Retail theft-2011:** Applicant admitted, during his July 2023 BI, that in October 2011, when he was 17 years old, he shoplifted a pack of gum from a gas station. The police were notified, and he was arrested shortly after leaving the store. He was formally charged with misdemeanor theft, but the case was ultimately *nolle prossed*. (GE 2 (pp. 5-6), GE 3)

**Possession of liquor by a minor-2012:** Applicant admitted, during his BI, that in February 2012, when he was 18 years old, he was partying with some friends at an apartment. He drank so much vodka that he passed out. When he woke up, he found himself handcuffed by the police. He was formally charged with a misdemeanor, but the case was ultimately *nolle prossed*. (GE 2 (p. 5), GE 3)

**Disorderly conduct-2014:** Applicant admitted, during his BI, that in July 2014, he and some friends were hanging around outside a baseball stadium trying to flirt with girls. They talked with some girls they knew and as the girls were leaving, he hit a girl that he knew on her buttocks. He intended the contact as a joke. A police officer witnessed the contact and arrested Applicant for disorderly contact. He was formally charged with a misdemeanor, but according to him, the officers failed to show up at court hearings on two occasions and the charges were dismissed. (Tr. 31-32; GE 2 (p. 6), GE 3)

**Marijuana use-2008-2009, 2020:** Applicant admitted using marijuana in high school (2008-2009) and later in 2020. He claimed that his use in high school was smoking a marijuana cigar three different times with friends. He did not like it and felt no effects from smoking it. His 2020 use occurred when he came home from college, visited some friends, and was offered a marijuana cigar, from which he took several puffs. He discovered that he still did not like it. He stated he had no intent to use marijuana in the future. He failed to disclose his 2020 marijuana use on his May 2023 SCA, in Section 23. During his hearing testimony, he claimed he did not know marijuana was illegal under federal law until Department Counsel stated such in her opening statement. He admitted

using marijuana in 2008-2009 and 2020, during his BI. He told the investigator that he did not list his 2020 marijuana use on his SCA because he forgot about it. In his answers to Government interrogatories in April 2024, he denied ever using marijuana, which the question described as a “Federally illegal drug.” The explanation he gave, during his testimony, for that answer was that he hurried through the question, not really paying attention to what it was asking him. (Tr. 33-34, 57; GE 2 (pp. 7-8, 19)

**Adderall use-2021:** In his testimony, Applicant admitted using Adderall from about February to May 2021, without a legal prescription. He explained that he was taking a very difficult course in college and needed to focus more. This was during COVID-19, so he was unable to get additional assistance from professors because of the limited contact during this time. He admitted not having a prescription for it. He sought it out from a friend, but he did not know whether the friend had a prescription for it. He did not disclose this use on his SCA, or during his BI. He testified that the reason he did not was because, “I didn’t think it was a big deal.” He finally disclosed his Adderall use when he answered the Government’s interrogatories in April 2024. (Tr. 34, 46-47; GE 2 (pp. 7-8, 19)

**Three driving with a revoked/suspended driver’s license charges-November 2021, June 2022, September 2022:** Applicant testified that his driver’s license was suspended because of an unpaid speeding ticket. He claimed he could not afford to pay the ticket because he was in college, and he did not have the money. Despite this, he continued to drive on a suspended license repeatedly, which resulted in the three arrests. He stated he drove because, “I still had to get around.” Applicant claims once he graduated and gained employment, he was able to pay the costs of the ticket and he acquired a new driver’s license in the state of his current residence. He admitted that only a month before his hearing, he was stopped for having expired license tags. This was not alleged in the SOR, and will only be used, if at all, for assessing mitigation and the whole-person factors. He failed to list these three arrests on his SCA, or disclose them during his BI. When an interrogatory question specifically asked him about the three suspended license charges, he provided an answer consistent with the above information. (Tr. 32-33, 43, 52; GE 2-3 (p. 25)

**Assault charge, pleaded down to disorderly conduct-September 2022:** During his testimony, Applicant admitted that he got into a fight outside a bar and he punched the other person. He claimed that he was provoked when the other person used a racial epithet directed at him. He denied any other assaultive behavior other than punching him. The charge was negotiated down to disorderly conduct to which he pleaded guilty. His sentence required him to attend anger management classes, which he completed. He failed to list this charge on his SCA. He claimed he failed to report it because he did not think to do so because the charge was dismissed. He also stated an unrecalled fellow employee told him he could verbally report the information during his BI, which is what he did. (Tr. 37-42; GE 3 (pp. 4-5))

In addition to what was already stated about why Applicant failed to either list required information on his SCA, or disclose it during his BI, he provided this additional

information. He had only been at his job for a few months when he was directed to complete his SCA. He did not seek out assistance from his facility security officer before completing it. He was very busy learning his job and he felt he could not take the appropriate time to complete his SCA. He also admitted that he did not take the clearance process seriously and he just skimmed through it. He claimed he did not list certain information on his SCA because he thought he could address any questions during his BI. He also claimed he was not trying to hide anything because he knew the Government would find out everything anyway. He admitted during cross examination that he knew his answers on his SCA to the drug questions and criminal history question should have been “yes.” He explained that he would answer “no” on his SCA, then explain if asked about the subject during his BI. During his BI, he was asked about his criminal record and only disclosed the 2011 and 2012 charges. Only after he was confronted did he discuss the 2021 and 2022 criminal charges. Applicant also stated that he was hesitant to be honest with the investigator conducting his BI because he was afraid the information would be used against him and he could lose his job. Specifically, he referenced the September 2022 disorderly conduct charge that he initially failed to disclose during his BI. (Tr. 35, 49-50, 52-54, 59, 64; GE 2 (p. 4))

### **Whole-Person Information**

Four personal friends and one work colleague provided character letters in support of Applicant. Two authors stated they were aware of his legal issues. The general tone of all the letters was that Applicant is a dedicated worker and a valued, trusted, and reliable employee. He is a good friend who is loyal, compassionate, and trustworthy. He came from a difficult background and has risen above his past. (SOR answer, attached letters)

### **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 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 careful weighing 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.

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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 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 E, Personal Conduct**

AG ¶ 15 expresses the personal conduct security concern:

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.

16. Conditions that could raise a security concern and may be disqualifying include:

(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;

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative; and

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, 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 individual may not properly safeguard classified or sensitive information.

All the admitted SOR allegations in ¶¶ 1.a-1.i have elements of drug misuse or criminal activity to them. However, what is at the heart of all these adverse actions that began in 2011 and continued intermittently through 2022, is Applicant's repeated bad judgment, untrustworthiness, unreliability and unwillingness to comply with rules. AG ¶ 16(c) applies to SOR ¶¶ 1.a-1.i. The general concern expressed in AG ¶ 15 also applies.

Applicant's disingenuous, contradicting, and self-serving reasons for why he failed to disclose his criminal offenses and his use of marijuana and Adderall on his May 2023 SCA are unconvincing. For example, he stated he did not list his 2021 and 2022 criminal charges on his SCA because he would discuss them with an investigator during his BI. Yet, he failed to disclose those charges when specifically asked about criminal charges during his BI. He did not list his misuse of Adderall because he thought it was "no big deal." I conclude that he deliberately falsified or withheld information on both his SCA and during his BI as alleged. AG ¶ 16(a) applies to SOR ¶¶ 1.j-1.k, and AG ¶ 16(b) applies to SOR ¶ 1.l.

Applicant's explanation for answering "no" to the interrogatory question of whether he had ever used marijuana, which was that he did not read the question correctly, is plausible. I conclude this because he had already disclosed his marijuana use during his BI, so it makes little sense for him to deliberately provide false information to this question at this time. The Government failed to establish SOR ¶ 1.m under AG ¶ 16(b).

I have also considered all of the mitigating conditions for personal conduct under AG ¶ 17 and considered the following relevant:

- (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; and

(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 contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Applicant's criminal offenses individually could be characterized as minor, however, the repeated nature of his aberrant behavior and rules violations transforms his actions into serious security concerns. His recent traffic offense for driving with expired tags is evidence that his behavior has not conformed to societal norms, thus indicating that his bad behavior is likely to recur. AG ¶¶ 17(c) and 17(d) do not apply.

Applicant failed to apprise the BI investigator about his 2021 and 2022 criminal offenses before he was confronted with that information. AG ¶ 17(a) does not apply. Additionally, providing false information on an SCA or during a BI is not a minor offense because it strikes at the heart of the clearance process, which relies on open and honest reporting. AG ¶ 17(c) does not apply to SOR ¶¶ 1.j-1.l.

### **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 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.

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 considered Applicant's age, and the supportive statements of his coworker and friends. However, I also considered Applicant's

multiple falsifications and his continued pattern of rules violations that began in 2011 and continued through 2025 with his ticket for having expired license tags.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the personal conduct security concerns under Guideline E.

## **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 E:

## AGAINST APPLICANT

### **Subparagraphs 1.a-1.l:**

## Against Applicant

#### **Subparagraph 1.m:**

## 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. Eligibility for access to classified information is denied.

Robert E. Coacher  
Administrative Judge