



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



In the matter of:

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) ISCR Case No. 14-05563
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Applicant for Security Clearance

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel

For Applicant: *Pro se*

August 6, 2015

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on August 14, 2013. On December 24, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines H and F for Applicant. 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 (AG), effective within the Department of Defense after September 1, 2006.

Applicant acknowledged receipt of the SOR on January 13, 2015. He answered the SOR in writing (Answer) on January 26, 2015, and requested a hearing before an Administrative Judge. The Defense Office of Hearings and Appeals (DOHA) received the request soon thereafter, and I received the case assignment on April 13, 2015. DOHA issued a notice of hearing on April 15, 2015, and I convened the hearing as scheduled on May 27, 2015. The Government offered Exhibits (GXs) 1 through 5,

which were received without objection. Applicant testified on his own behalf and submitted Exhibits (AppXs) A and B, which were received without objection. DOHA received the transcript of the hearing (TR) on June 4, 2015. I granted Applicant's request to keep the record open until June 26, 2015, to submit additional matters. On June 25, 2015, he submitted Exhibit C, which were received without objection. As the undersigned was on leave through June 28, 2015, the record closed on June 29, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his Answer to the SOR, Applicant admitted all the factual allegations in all of the Subparagraphs of the SOR, with explanations; except for Subparagraph 1.c., as he denies any future usage of marijuana. He also provided additional information to support his request for eligibility for a security clearance.

Guideline H - Drug Involvement

Applicant is 46 years old, married, has worked for his present employer for about two years, and this is the first time he is applying for a security clearance. (TR at page 23 line 11 to page 24 line 20.) Prior to 2006, he used marijuana in "college, socially, . . . a dozen or two [dozen]" times. (TR at page 25 line 17 to page 24 line 20.)

1.a. From 2006 to 2008, Applicant used marijuana "three or four times a month" to self-medicate himself as he has "extremely high metabolism"; resulting in an loss of "body mass," as "it [marijuana] had a positive effect on . . . [his] appetite." (TR at page 26 lines 2~25, at page 27 lines 10~12, and at page 30 lines 7~15.)

1.b. and 1.c. In 2008, Applicant received a written prescription for his marijuana usage, as evidenced by his "Physician's Statement & Recommendation." (TR at page 27 line 13 to page 30 line 6, and AppX C.) He used marijuana "every other day," which "reduced the weight loss considerably." (*Id.*) Applicant did not know that this usage was against Federal Law, until he was informed of such "by the Interviewer who came out after . . . [he] had done . . . [his] initial e-QIP" in January of 2015. (TR at page 30 line 16 to page 33 line 1.) Since being so informed, he obtained a prescription for "Dronabinal," in "Capsule" form, to treat his weight loss ailment, and has not used marijuana since January of 2015. (*Id.*, TR at page 34 lines 2~6, and Answer, attachments 1~3.) Applicant does not intent to use marijuana in the future. (TR at page 33 lines 2~25.)

Guideline F - Financial Considerations

2.a. Applicant admits that he had a past-due debt, as the result of a hospital admission in 2012, in the amount of about \$15,466. (TR at page 35 line 11 to page 36 line 19.) He did not "have a job nor any insurance" at the time of his admission. (*Id.*)

This debt has been paid, as evidenced by a letter from the creditor hospital's "Account Representative." (TR at page 39 lines 15~23, and Answer, attachment 4.)

2.b. Applicant also admits that he had a past-due debt, as the result of his transport to the hospital by ambulance for his admission in 2012, in the amount of about \$1,624. (TR at page 36 line 20 to page 37 line 7.) This debt has been "Paid in Full," as evidenced by a letter from the successor creditor of this debt. (*Id.*, and AppX A.)

2.c. and 2.d. Applicant admits that he had other past-due debts, as a result of a 2009 hospitalization, totaling about \$167. (TR at page 37 lines 8~15, and at page 39 line 24 to page 40 line 13.) These debts have been paid, as evidenced by a letter from a "collection agency." (*Id.*, and Answer, attachment 5.)

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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and commonsense decision. According to AG Paragraph 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 Paragraph 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of 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 Paragraph E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive Paragraph E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining 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 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 H - Drug Involvement

The security concern relating to the guideline for Drug Involvement is set out in Paragraph 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 also notes several conditions that could raise security concerns. Under Subparagraph 25(a), “*any drug abuse*” may be disqualifying. Here, Applicant used marijuana socially, while in college, prior to 2006; used it without a prescription to treat an illness from 2006~2008; and used it pursuant to a prescription from 2008 until his last usage in January of 2015.

These are countered, however, by the mitigating conditions found in Subparagraph 26(a). Applicant’s “*behavior . . . happened under such unusual circumstances that it is unlikely to recur . . .*” Applicant most recently used marijuana pursuant to a prescription in January of 2015. Once he was informed that this usage was against Federal Law, he ceased this usage, and now is prescribed a medication to treat his ailment. Furthermore, he avers he will not use marijuana in the future. I find his statement of intent to be credible and sincere.

Guideline F - Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in Paragraph 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 Subparagraph 19(a), an *"inability or unwillingness to satisfy debts"* is potentially disqualifying. Similarly under Subparagraph 19(c), *"a history of not meeting financial obligations"* may raise security concerns. Applicant, without medical insurance, had difficulty meeting his financial obligations. However, I find two countervailing Mitigating Conditions that are applicable here. Under Subparagraph 20(b), it may be mitigating where *"the conditions that resulted in the financial problem were largely beyond the person's control (e.g. . . . unexpected medical emergency. . .), and the individual acted responsibly under the circumstances."* Applicant's past-due indebtedness is directly attributed to his 2009 and 2012 emergency hospitalizations. Under Subparagraph 20(d), it may also be mitigating where *"the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."* Applicant has paid the alleged past-due debts.

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. Under AG Subparagraph 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.

The Administrative Judge should also consider the nine adjudicative process factors listed at AG Subparagraph 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.

I considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. The Applicant is well respected by a former employer. (AppX B.) The record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For this reason, I conclude

Applicant has mitigated the security concerns arising from his Drug Involvement and 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:	FOR APPLICANT
Subparagraph 1.a.:	For Applicant
Subparagraph 1.b.:	For Applicant
Subparagraph 1.c.:	For Applicant
Paragraph 2, Guideline F:	For APPLICANT
Subparagraph 2.a.:	For Applicant
Subparagraph 2.b.:	For Applicant
Subparagraph 2.c.:	For Applicant
Subparagraph 2.d.:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Richard A. Cefola
Administrative Judge