



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



In the matter of:)	
)	
-----)	ISCR Case No. 10-09384
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: *Pro se*

04/26/2013

Decision

MARSHALL, Arthur E., Administrative Judge:

The Department of Defense (DOD) issued to the above-referenced Applicant an undated Statement of Reasons (SOR). The SOR enumerated security concerns arising under Guideline E (Personal Conduct) and Guideline F (Financial Considerations). DOD took action 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* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

In a response dated October 24, 2012, Applicant discussed the allegations set forth in the SOR and requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. DOHA assigned the case to me on January 23, 2013. Applicant agreed to a hearing date of February 14, 2013, and a notice setting the hearing for that date was issued on January 30, 2013.

The hearing was convened as scheduled. Applicant testified and introduced one witness. The Government offered 11 documents, which were accepted into the record as exhibits (Exs.) 1-11 without objection. The transcript of the proceeding (Tr.) was received on February 25, 2013, and the record was closed. Based on a review of the

testimony, submissions, and exhibits, I find Applicant failed to meet his burden of mitigating security concerns related to financial considerations. Clearance is denied.

Findings of Fact

Applicant is a 29-year-old system administrator. He has worked for the same defense contractor for three years. He has a high school diploma, one year of college credit, and multiple professional certifications. Applicant is married, has two children, and his wife is expecting a third child in the near future.

Applicant first tried illegal drugs in around 1997, when he was approximately 14 years of age and attending high school. At that time, his drug use was usually limited to parties. He genuinely does not remember the frequency of his drug use at that time, but is confident it was not a regular past time.¹ His use during high school was intermittent, often foregoing drugs for months at a time. He estimates that he used marijuana at least 10 times as he simultaneously completed his high school courses and attended college courses. Like some of his peers, he “sold somebody a small amount of” his own marijuana on occasion.² He did not associate with professional drug dealers. He completed high school and his freshman year college courses in 2001. Later that year, he joined the United States Marine Corps.

Along with marijuana, which he used with varying frequency until 2004, then again in 2006, Applicant used other drugs during this time frame.³ He used opium with varying frequency from about 1997 until 2006. He tried Ecstasy between 1998 and 2001, and hallucinogenic mushrooms and whipped cream aerosols between 1997 and 2000.

In August 2001, after joining the Marine Corps, Applicant completed a security clearance application (SCA) in which he only disclosed having used one illegal drug (marijuana from July 1998 to September 2000) since the age of 16 or in the last seven years.⁴ By then, he had used marijuana more than 10 times and had continued to use marijuana through 2001. He limited his disclosure because he was young and scared.⁵ He also intentionally failed to disclose that during that time frame, he used opium, Ecstasy, and hallucinogenic mushrooms. Following a 2002 interview, Applicant signed

¹ Tr. 23.

² Tr. 25.

³ Regarding Ecstasy, opium, and mushrooms, Applicant testified he used them “a few times” or “a couple of times.” Tr 31-32.

⁴ Applicant never learned whether he was granted a security clearance after this SCA. Tr. 37.

⁵ “I was stupid. I had gotten kicked out of a high school that both sides of my family for two generations graduated from. I was the only one not to graduate from it. I had no college prospects. . . . I made poor judgment. I made a lot of the same mistakes any 18 year old with no prospects would do. I did lie. It was not malicious. It was more out of being scared. . . . I made a terrible mistake.” Tr. 33-34.

an affidavit in February 2002 in which he stated he had never purchased any illegal drugs other than marijuana, intentionally failing to note that he had purchased hallucinogenic mushrooms on at least one occasion.⁶

Applicant used cocaine “a couple of times” in 2003, while in the Marine Corps.⁷ He tested positive for that drug in July 2003, leading to a court-martial, 30 days in the brig, and an October 2003 discharge under Other Than Honorable conditions by reason of misconduct. From the time of his discharge until August 2004, his life was somewhat aimless, during which time he did random work as a brick mason on a part-time basis before finding a full-time position. At some point during this period, Applicant tried crystal methamphetamine. He attributed his drug use during this stage of his life as the result of stupidity, immaturity, and socializing with the wrong sort of people.⁸

In 2006, Applicant’s girlfriend discovered she was pregnant. The prospect of being a father dramatically changed Applicant, and he quit using drugs.⁹ He did so because he genuinely wanted to build a stable family and did not want to use or have drugs around his children. He also decided it was time to become a more responsible individual. He married his girlfriend and was able to forego drugs without treatment. His resolve was reenforced when his best friend was convicted of selling and distributing marijuana, and sent to prison for three years in 2009. Since his release, Applicant and his best friend have resumed their friendship. The friend, however, no longer uses drugs and is appreciative of Applicant’s commitment to staying drug-free.¹⁰ Applicant’s resolve was further reenforced when he started his present position, where he feels he has embarked on a stable career and where he is subject to random urinalysis tests.¹¹ With a third child on the way, Applicant will not do anything to compromise his job stability. Neither he nor his wife will tolerate drugs in their home. Applicant has no intention of using drugs again in the future.

In June 2010, Applicant completed an electronic questionnaire for investigations processing (e-QIP). On that form, Applicant admitted having illegally used drugs in the preceding seven years. He then disclosed having used marijuana twice in 2006. He failed to disclose that he had used marijuana and crystal methamphetamine in 2004 and opium sometime between 2003 and 2006. Applicant has repeatedly and credibly acknowledged that he is not good at dates and that his citation of dates may vary. He

⁶ Tr. 36. Applicant credibly denied remembering his purchase of any other illegal drugs, such as Ecstasy and opium.

⁷ Tr. 38. The “couple of times” appear to have taken place during one particular weekend. Tr. 44-45.

⁸ Tr. 38-39.

⁹ Applicant’s girlfriend was also changed by the prospect of their having a baby. Although she was never a big drug abuser, she quit all drugs and the use of cigarettes once she became pregnant. Tr. 59-60.

¹⁰ Tr. 58.

¹¹ Tr. 46.

did not intentionally falsify his answers in the e-QIP.¹² The record was ultimately supplemented during interviews conducted after he completed his e-QIP. Applicant tried to responsibly answer the questions as completely as he could. He is embarrassed and contrite over any confusion he may have caused.

Applicant's finances are also at issue. Applicant acquired a number of delinquent debts near the end of his military career and shortly thereafter, when he experienced a period of unemployment and underemployment. Unfamiliar with bankruptcy law, he mistakenly filed for Chapter 13 bankruptcy in September 2004. He had meant to file for a form of bankruptcy that would provide him with a fresh start (Chapter 7) because he lacked the current income to adhere to a structured repayment plan. He also lacked the funds to hire a lawyer who could explain the nuances of the various chapters of the bankruptcy code and convert the Chapter 13 to a Chapter 7 filing. Consequently, in February 2005, that bankruptcy was dismissed when he failed to obtain confirmation of a payment plan or to make plan payments. Some of the debts originally named in his bankruptcy petition remain unpaid and are at issue.¹³

The SOR cites to four delinquent debts. The first (2.b) is a charged-off account for approximately \$3,556 and was related to a motorcycle purchased in 2002. He stopped making payments on the motorcycle in 2003, around the time he was discharged from the Marines. When it was later involved in an accident, Applicant did not apply any of the damages he received toward this debt, which remains delinquent.¹⁴ Applicant also bought an automobile in 2002. It was repossessed in 2003, after Applicant's discharge, for being past-due 180 days or more in the approximate amount of \$5,208, and leaving a delinquent debt (2.c). He has never initiated any payments on this debt and is waiting for its removal from his credit report because of its age.

The other two debts at issue (2.d-2.e) are relatively nominal and recently have been paid.¹⁵ They amount to about \$350. Applicant is not aware of any other debts. His wife currently handles their finances. Except for helping with the billing for a children's summer camp, she has not worked outside the home in two years. Applicant currently earns \$80,250 annually. Because of his wife's high-risk pregnancy and a "whole bunch of stuff," Applicant does not believe they have a net balance left over at the end of each pay period.¹⁶ They are presently living on the edge financially. Applicant has not sought financial counseling. He hopes he can start addressing the nearly \$9,000 of delinquent

¹² Tr. 68.

¹³ Not all those debts remain at issue. A home that was foreclosed upon was apparently sold for more than he owed, thus precluding a deficiency. Tr. 61-62.

¹⁴ Tr. 63-65.

¹⁵ Tr. 68-70; Answer to the SOR.

¹⁶ Tr. 71. "We've been paying off medical bills with everything we have left over."

debt at issue when he can, although he acknowledges that time seems unclear given their immediate needs and the current economy.¹⁷

At work, Applicant is well-regarded. His workplace is aware of his past drug use and his financial issues. He is described as “professional, courteous, very helpful. . . (h)e’s a hard worker.”¹⁸ Applicant truly enjoys both his job and his workplace.

Policies

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions. 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. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all 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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

The Government must present evidence to establish controverted facts alleged in the SOR. 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. . . .”¹⁹ The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.²⁰

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 those 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

¹⁷ Tr. 75.

¹⁸ Tr. 80.

¹⁹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

²⁰ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

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 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). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”²¹ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.²²

Based upon consideration of the evidence, Guideline F (Financial Considerations) is the most pertinent to this case. Conditions pertaining to this AG that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

Analysis

Guideline E – Personal Conduct

Security concerns arise from matters of personal conduct because 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.²³ Here, Appellant used multiple types of illegal drugs at various times between 1997, when he was a teen, and 2006, when he discovered he was to become a father. On more than one occasion, he sold small amounts of marijuana to peers. In 2001, he only noted that he had used marijuana in a SCA, failing to disclose he had also used opium, Ecstasy, and hallucinogenic mushrooms. In 2002, he signed an affidavit in which he admitted having purchased marijuana but failed to note he had also purchased Ecstasy and hallucinogenic mushrooms. While in the Marines, he tested positive for cocaine in 2003, an incident that led to his being discharged under Other Than Honorable conditions. Such facts are sufficient to raise Personal Conduct Disqualifying Conditions 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 —

²¹ *Id.*

²² *Id.*

²³ AG ¶ 15.

and AG ¶ 16 (e)

— personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing. . . .

Consequently, the burden is on Appellant to mitigate security concerns.

Since discovering he was to become a father in 2006, Applicant quit using drugs and eliminated their use from his household. His wife joined him in this endeavor and went so far as to quit using cigarettes. Applicant became committed to settling down and starting a traditional family. He married, the couple has two children, and a third child is on the way. He has a stable job in a professional field he enjoys. He supports his wife, who has chosen to become a stay-at-home mother and homemaker, with only part-time employment in the summer. He has also supported her through a high-risk pregnancy which has burdened them with extraordinary expenses. Although they are currently living paycheck to paycheck because of current conditions, he does not believe they have acquired any new debts. Applicant remains optimistic that he will eventually be able to repay his nearly \$9,000 in delinquent debt, despite the fact it has remained unaddressed for years.

Applicant's 2006 turnaround also excelled his professional growth. Since that time, he has acted in a responsible manner at work, just as he has taken on the duties and obligations of being the head of a family. The lone accusation calling into question his veracity since 2006 is an answer on a 2010 e-QIP, in which he disclosed incorrect dates for the use of certain drugs. However, Applicant repeatedly testified and demonstrated that he has difficulty with dates. Obviously, that difficulty was not fatal as investigators were given notice that Applicant's past use of illegal drugs was extensive and diverse. His answer as given provided enough notice to investigators to follow up with Applicant during his personal interviews. There is no indication that the inaccurate dates were intentionally wrong or that they were meant to accomplish a dubious goal.

In taking on the mantle of maturity in 2006, Applicant turned away from illegal drugs, demonstrated considerable maturation, and has been both contrite and straightforward with the facts, despite some innate difficulty with dates. He is committed to his job, where he is highly appreciated and which he very much enjoys. It provides him with the opportunity to support his family, to which he is highly committed. There is no present risk that Applicant will do anything untoward which might adversely affect either his employment or his family's comfort. Consequently, I find that Personal Conduct Mitigating Condition AG ¶ 17(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 —

and AG ¶ 17(e):

— *the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress* —

apply.

Guideline F - Financial Considerations

Under Guideline F, failure or an 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.²⁴ Applicant has nearly \$9,000 in debt which has been delinquent for nearly a decade. He does not presently have a plan for repaying that debt, nor does he have the financial resources to initiate some form of repayment plan. Such facts are sufficient to raise Financial Considerations Disqualifying Conditions AG ¶ 19(a):

— *inability or unwillingness to satisfy debts* —

and AG ¶ 19(c):

— *a history of not meeting financial obligations.*

With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

Although Applicant was reduced to performing random work in a part-time capacity from the time of his October 2003 discharge from the Marines until August 2004, the conduct leading to his discharge was not beyond control. Therefore, Financial Considerations Mitigating Condition AG ¶ 20(b):

— *the conditions that resulted in the behavior 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* —

does not apply.

Applicant has not received financial counseling, obviating application of AG ¶ 20(c):

²⁴ AG ¶ 18.

— the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control.

However, his payment of his two smallest obligations, amounting to a sum of about \$350 is sufficient to raise AG ¶ 20(d):

— the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts —

as to SOR allegations 2.d and 2.e. None of the other mitigating conditions apply.

Whole Person Concept

Under the whole-person concept, an 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. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept. In addition, what constitutes reasonable behavior in such cases, as contemplated by FC MC ¶ 20(b), depends on the specific facts in a given case.

I considered the specific facts and circumstances in this case. Applicant is a 29-year-old professional who turned his life around in his early 20s. The prospect of becoming a father and taking on the responsibilities of both husband and head of household accelerated his maturation. After years of aimless living, he quit using drugs, pursued a career, and focused on becoming a professional and a reliable family man. Today, he supports his two children and his wife, who is undergoing a costly and high risk pregnancy, on his \$80,250 salary. As part of his maturation, he has become both candid and demonstrably contrite regarding his past. But for a problem with dates, which was notable at the hearing, he has been open about the fact he is a former drug abuser. Given his commitment to both his family and to his employer, I have no serious reservations Applicant will again demonstrate personal conduct that would raise serious security concerns.

Despite a recent payment of about \$350 toward his delinquent debt, however, Applicant concedes that he is basically living paycheck to paycheck at this time. He has no plan as to how he will repay the nearly \$9,000 in delinquent debt that has been largely unaddressed for a decade. There is no evidence he has ever tried to work with these creditors or ever apprised them of his financial situation. This process does not require one to satisfy all his delinquent debts. It does, however, demand that an applicant have a reasonable plan for addressing his debts – and evidence that significant steps have been made to implement that plan. As of this time, Applicant lacks the evidence such effort has been effectively exercised. Given the amount of debt at issue, the length of its delinquency, and Applicant's present financial resources, financial considerations security concerns remain unmitigated. Clearance is denied.

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:	FOR APPLICANT
Subparagraphs 1.a-1.m:	For Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.c:	Against Applicant
Subparagraphs 1.d-1.e:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant a security clearance. Clearance is denied.

ARTHUR E. MARSHALL
Administrative Judge