



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



In the matter of:)	
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SSN: -----)	ISCR Case No. 07-00968
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: *Pro Se*

January 28, 2009

Decision

ABLARD, Charles D., Administrative Judge:

Applicant mitigated security concerns regarding Drug Involvement (Guideline H). Alcohol Consumption (Guideline G), and Financial Considerations (Guideline F). Clearance is granted.

Statement of the Case

On February 6, 2006, Applicant submitted a Security Clearance Application (SF 86). On August 11, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant

or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant responded to the SOR allegations in a sworn statement with one document attached. The answer was signed on September 2, 2008. He admitted most of the factual details of the allegations of the SOR relating to drug use in his answer but questioned the extent of the use. He admitted all of the allegations relating to alcohol use except for the dates of treatment. He denied five financial allegations and admitted ten with explanations for some of them appended to the answer. He requested a hearing before an administrative judge.

The case was assigned to me on October 20, 2008. DOHA issued a notice of hearing on November 5, 2008, for a hearing on November 19, 2008, and it was held on that day. At the hearing, the government offered seven exhibits (Exhs. 1-7) that were admitted in evidence without objection. Applicant submitted ten exhibits (Exhs. A-J) at the hearing. He testified on his own behalf as did four witnesses from his company. DOHA received the transcript of the hearing (Tr.) on November 26, 2008. At the request of Applicant, the record was held open for 30 days and three evidentiary documents were submitted within that time and admitted without objection (Exhs. K, L, and M).

Procedural Rulings

Notice of Hearing

The hearing notice was dated less than 15 days before the hearing date. I advised Applicant of his right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing. Applicant affirmatively waived his right to the 15 days notice and indicated he was ready to proceed (Tr. 10).

Documentary Evidence

Applicant objected to one document (Exh. 6) as irrelevant to this proceeding that relates to an allegation concerning a bankruptcy discharged in 1996. The objection was overruled on the basis that it was relevant to the more recent financial allegations. The document was admitted in evidence (Tr. 19-21).

Findings of Fact

Applicant is a 36-year-old employee of a defense contractor since January 2006 working as a senior data collector and trainer of over 100 employees in collecting and reporting testing information (Tr. 32). He is well regarded by his corporate employer.

Applicant is a recovering alcoholic and former drug addict. He drank alcohol to excess between 1992 when he was 20 years old and 1998 at which time he was arrested for DUI (Tr. 46-48). He pled guilty to a lesser offense of reckless driving. He was fined \$500 and lost his license for four months. This was a wake-up call and his

drinking declined until 2001 when he drank almost nothing. Now he does not drink any alcoholic beverages (Tr. 97-98). However, he failed to realize that his alcohol problem was only part of larger problems involving depression and related mental health issues (Exh. F).

When Applicant moved to a large West Coast city in 2001, he became involved in the club scene, and began using drugs (cocaine and crystal meth) (Tr. 51). He also used gamma (GBH) to bring down the effect of meth (Tr. 58). He became addicted and would occasionally sell drugs as well as use them. He used crystal meth daily for approximately one and a half years until 2003. In February 2003 Applicant was arrested by the Drug Enforcement Administration (DEA) and charged with possession of meth and transporting it for the purpose of sale (Tr. 61). In July 2003 he enrolled in the 12 step program of Alanon (Tr. 72) in which he participated until May 2005. He agreed to cooperate with the DEA and, in return, was never tried for the drug charge. He worked for the DEA from 2003 until June 2005. During the treatment period he was under the care of a psychiatrist, attended regular weekly meetings, and met with group counselors (Tr. 41-42, and 67). He has now been free of substance abuse for nearly six years. In June 2005 he moved away from the drug scene to a smaller city where he now lives. After several months of unemployment with short periods of employment, he was hired for his present job in January 2006.

Applicant has been diagnosed with an endocrine parathyroid disease in the last two years for which he is being treated at considerable expense. The treatment requires travel to out-of- state medical facilities (Tr. 15). Although he has health insurance he is required to make co-payments that have depleted the excess income over expenses that he reported in his interrogatories (Exhs. 2 and 3). Several of the hospitals and medical agencies have reduced his bills because of his income (Tr. 139). However, he still has medical bills which he is paying (Tr. 115). He has had two surgeries in the past year and now is faced with the probability of open heart surgery sometime in 2009 (Tr. 116). Despite the medical bills, he has been able to prevent accumulating further debt during this health care crisis. He continues to be able to work (Tr. 43). His net income every two weeks is \$2,200 after deductions (Tr. 138). He has never married and has no other persons for whom he is responsible.

Applicant filed for Chapter 7 bankruptcy for \$16,000 in debts that were discharged in 1996 after a security business failed that he had formed with a partner (SOR ¶ 3.a.) (Tr. 103). His current alleged delinquent debts arose during the time when he consumed alcohol to excess and used drugs. He has a tax accountant and counselor who testified at the hearing concerning his work with Applicant to resolve the financial problems. The tax debts are with the IRS and the California tax authorities (SOR ¶¶ 3.b. and c.). He has paid down the IRS debt that was originally \$14,000 to less than \$10,000 of which only \$3,000 is principal. Some payments have been made with tax refunds which he has managed by overstating withholdings on the advice of his employer. His advisor is working to have the interest and penalties removed (Tr. 114). The state tax debt is \$1,114 and is under investigation by the state authorities (Tr. 135). He denies two debts (SOR ¶¶ 3. l. and m.) totaling over \$1,700, and is contesting them (Exh. J). The remainder of his delinquent debts are for 11 credit card accounts (SOR ¶¶

3.d.-k. and n.). totaling approximately \$11,000 ranging in size from \$500 to almost \$4,000. Six have been charged off and almost all are over six years old. None are in active collection

Applicant's accountant and financial advisor testified by telephone conference call at the hearing. He noted that most of these debts are very old, some are beyond the statute of limitations of seven years in his state, some have been dropped, and none are in active collection (Tr. 122-130). He is working with Applicant to manage his debts and pay the remaining ones in a realistic manner in view of his continuing medical problems and treatment.

Applicant is highly regarded by his supervisors who describe him as "consistently outstanding" (Exh. A), and as having excellent abilities that he uses in training over a hundred employees (Tr. 98). The manager of the corporate office where he works testified for him along with three other supervisors at different supervisory levels. He is loyal, competent, reliable, focused, and hard-working. His supervisors and colleagues strongly supported his integrity, work ethic and loyalty (Tr. 28-34, and 90-103). He has received several awards for his service (Exhs. D and E 1-5) including employee of the quarter in 2006. He also works with other recovering drug abusers, alcoholics, and tobacco addicts to help them break the habits (Tr. 14). Letters of recommendation were submitted by several who testified and others who did not (Exhs. A, B, C, and I). He does not handle or work with classified materials but needs a security clearance to enhance flexibility of assignments for his employer (Tr. 32).

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised 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 common sense decision. According to AG ¶ 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 ¶ 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.

In the decision-making process, the Government has the initial burden of establishing controverted facts alleged in the SOR by “substantial evidence,” demonstrating, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant’s access to classified information. Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to produce evidence “to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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* Executive Order 12968 (Aug. 2, 1995), Section 3.

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude that the following Adjudicative Guidelines provide the standard for resolution of the allegations set forth in the SOR.

Guideline H Drug Involvement

The security concern relating to the guideline for Drug Involvement is set out in AG ¶ 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.

(a) Drugs are defined as mood and behavior altering substances, and include:

(1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and

(b) drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

Conditions that could raise a security concern and may be disqualifying include any drug abuse AG ¶ 25 (a), or illegal drug possession including sale of drugs (AG ¶ 25 (c)).

Applicant's admissions of drug use and the evidence introduced establishes that the potentially disqualifying condition has been met.

AG ¶ 26 provides several possible conditions that could mitigate security concerns:

(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; 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.

Drug involvement with illegal drugs is mitigated by the passage of time over a period of six years. He entered the drug treatment program in 2003 and has removed himself from contact with drug users. He completed the treatment program in 2005 and has been completely free of drugs since entering it. Thus, I conclude that he has mitigated the allegations relating to the use of drugs.

Guideline G, Alcohol Consumption

AG ¶ 21 expresses the security concern pertaining to alcohol consumption in that, "Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness."

AG ¶ 22 describes conditions that could raise a security concern and may be disqualifying. The relevant ones to this matter are:

- (a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;
- (c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

Thus, the evidence submitted clearly raises these potentially disqualifying conditions.

AG ¶ 23 provides conditions that could mitigate security concerns:

- (a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser);
- (c) the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress; and,
- (d) the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Applicant's alcohol problems were largely resolved in 1998. Since that time he has been treated for both alcohol and drug abuse, successfully completed a program over three years ago, and is free of both substances. He has mitigated the security concerns.

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 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 AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. Applicant accumulated the delinquent debts cited in the SOR and was unable or unwilling to pay the obligations for several years. The evidence shows that he has been able pay some of the debts and has worked out a payment plan for others consistent with his limited income. Thus the evidence clearly raises these potentially disqualifying conditions.

The guideline also includes several mitigating conditions (MC) that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where "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."

AG ¶ 20(b) provides that the conditions that resulted in the financial problem were largely beyond the person's control through business downturn or unexpected medical emergency. Most of Applicant's first financial problems arose as a result of his business failure in 1996, and his current medical condition and the requirements for treatment were and are beyond his control. Thus, this mitigating condition is applicable for those issues.

AG ¶ 20 (c) applies when 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. Applicant has received and continues to receive good advice from his credit counselor and has a plan that is being implemented with the income available.

AG ¶ 20 (d) applies where the evidence shows the person initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. While it not necessary that all of the delinquent debts be resolved for mitigation to apply, it is necessary that a significant portion of the debts be settled or paid.

AG ¶ 20 (e) applies when the person has a reasonable basis to dispute the legitimacy of of the debt and provides evidence of actions to resolve the issue. Applicant has shown that the two denied debts are being disputed with the help of professionals.

Applicant has shown that both his federal and state tax debts are being resolved and that he is not accumulating further debt. His professional advisor has analyzed the status of the remaining credit card debts to my satisfaction. They are being resolved as best Applicant can and they pose no threat to national security. The mitigating conditions are applicable.

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(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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept.

After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude Applicant has mitigated the concerns. By his mid-thirties he changed himself from an alcoholic drug abuser to a worthwhile citizen holding a responsible position in the defense industry. He is admired and trusted by his employer and his supervisors. He has removed himself from the drug scene and does not drink even on social occasions. His health is a continuing problem but it is not adding to any of the issues presented to me.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), a careful consideration of the whole person factors and supporting evidence, application of the pertinent factors under the adjudicative process, and interpretation of my responsibilities under the guidelines. Applicant has mitigated or overcome the government's case. For the reasons stated, I conclude he is eligible for access to classified information.

Formal Findings

Formal findings 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
Subparagraph 1.d.:For Applicant

Paragraph 2, Guideline G:FOR APPLICANT

Subparagraph 2.a.:For Applicant
Subparagraph 2.b.:For Applicant
Subparagraph 2.c.:For Applicant
Subparagraph 2.d.:For Applicant

Paragraph 3, Guideline F: FOR APPLICANT

Subparagraph 3.a.:For Applicant
Subparagraph 3.b.:For Applicant
Subparagraph 3.c.:For Applicant
Subparagraph 3.d.:For Applicant
Subparagraph 3.e.:For Applicant
Subparagraph 3.f.:For Applicant
Subparagraph 3.g.:For Applicant
Subparagraph 3.h.:For Applicant
Subparagraph 3.i.: For Applicant
Subparagraph 3.j.: For Applicant
Subparagraph 3.k.:For Applicant
Subparagraph 3.l.: For Applicant
Subparagraph 3.m.:For Applicant
Subparagraph 3.n.:For Applicant

Conclusion

In light of all the circumstances presented by lthe record in this case, it is clearly consistent with the national interest to grant or continue eligibility for a security clearance for Applicant at this time. Clearance is granted.

Charles D. Ablard
Administrative Judge