



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



In the matter of:)	
)	
)	ISCR Case No. 16-03549
)	
Applicant for Security Clearance)	

Appearances

For Government: Allison O’Connell, Esq., Department Counsel

For Applicant: *Pro se*

12/28/2018

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny his eligibility for a security clearance to work in the defense industry. Applicant mitigated the personal conduct concerns, but the financial considerations concerns remain. Applicant failed to timely file his federal and state income tax returns and timely pay his income taxes, as required, for seven of the last eight years. He also failed to resolve his delinquent accounts. Applicant’s request for access to classified information is denied.

Statement of the Case

On July 21, 2017, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline.¹ DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant’s security clearance and recommended that the case be submitted to a Defense Office of Hearings and Appeals (DOHA) administrative judge for a determination whether to deny his security clearance.

¹ The DOD acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive), and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on June 8, 2017.

Applicant timely answered the SOR and requested a hearing. At the hearing, convened on September 10, 2018, I admitted Government's Exhibits (GE) 1 through 18 and Applicant's Exhibits (AE) A through E, without objection. After the hearing, Applicant timely offered AE F through K, which are also admitted without objection. DOHA received the transcript (Tr.) on September 19, 2018.

Procedural Matters

At the beginning of the hearing, Applicant indicated that he did not remember receiving the October 2017 letter Department Counsel sent to him containing the documents the Government planned to use in its case against him. Applicant confirmed that the letter and the attached documents were sent to the correct address. Before the hearing started, I offered Applicant the opportunity to review the letter and the Government's proposed exhibits. After doing so, Applicant confirmed he wanted to proceed with the hearing as scheduled.²

Findings of Fact

Applicant, 45, has worked as a security guard with several different federal contracting companies since October 2013. He has worked for his current employer, earning approximately \$60,000 annually, since December 2014. He completed a security clearance application, his first, in March 2015, disclosing a 2012 conviction for driving under the influence of alcohol. The ensuing investigation revealed a more extensive criminal record. The investigation also revealed that Applicant failed to file federal and state tax returns for a number of years between 2010 and 2015, and that Applicant owes \$7,000 on 12 delinquent accounts.³

The SOR alleges Applicant's criminal history under the personal conduct guideline. Applicant's first arrest for unlawful use of a vehicle, occurred in 1990 (SOR ¶ 1.a). He was among a group of people participating in a carpool. Neither he nor the other passengers were aware that the driver did not have permission to use the car. He was released without being charged. He was arrested again in 1992 for felony assault on a police officer (SOR ¶ 1.b). Applicant testified that he and his friends intervened in a domestic dispute they witnessed on a public basketball court. When the police arrived, Applicant was one of several people arrested. He denies assaulting a police officer. The charges were dismissed. In 2011, Applicant was charged with domestic violence after an incident involving his son, who was 20 at the time (SOR ¶ 1.e). The young man was intoxicated and started hitting his 18-year-old sister. Applicant intervened. Although he was arrested, Applicant testified that he was released without charges. Applicant was charged in March 2013 for driving with a suspended license (SOR ¶ 1.i) and in November 2013 for driving on a revoked license (SOR ¶ 1.j). Applicant testified that he

² Tr. 5-6; HE I.

³ Tr. 42-45; GE 1-3, 5-16.

was unaware of the status of his license in March 2013 and that the November 2013 incident was the result of an administrative mistake. Both charges were nolle prossed.⁴

Applicant admits being arrested multiple times for alcohol-related incidents. He was arrested in 1996 and 1998 for DUI (SOR ¶¶ 1.c – d). The dispositions of these charges is not in the record. In 2009 and 2012, Applicant was charged with driving while impaired by alcohol (SOR ¶¶ 1.f and 1.h) He was convicted both times. He received probation before judgment for the 2009 incident and served seven days in jail for the 2012 incident. At hearing, Applicant admitted that he had an alcohol problem. However, he realized that his alcohol consumption habits were incompatible with his work as a security officer. He has abstained from alcohol since 2014.⁵

The SOR also alleges a series of financial issues, specifically that Applicant failed to file his federal and state income tax returns for 2010 through 2015 (SOR ¶¶ 1.a and 1.b). However, based on wage and income transcripts in the record for 2010 through 2012, Applicant was not required to file federal or state income tax returns for 2012. Although he testified that his 2013 income did not meet the minimum filing requirement, he did not provide any corroborating documentation. Applicant explained that he failed to file his federal and state income tax returns because “time got away from him.” He filed his 2011, 2014 and 2015 federal income tax returns in September 2017, but did not pay the additional taxes owed. He testified that his outstanding state income tax returns were prepared, but he did not know if they had been filed. At hearing he admitted that he also failed to file his 2016 and 2017 federal and state income tax returns.⁶

Believing he owed outstanding federal taxes, Applicant testified that he intended to hire a law firm to help him negotiate with the IRS to pay a reduced amount. However, in his post-hearing submissions, he provided an installment agreement with the IRS filed in October 2018 to pay \$11,048 in outstanding federal taxes for the 2011 and the 2014 through 2017 tax years. The installment plan, which requires \$400 monthly installment, begins in December 2018. Applicant did not provide any additional information about the status of his outstanding state income tax returns. Applicant is also in debt to the state for \$1,064 (SOR ¶ 2.c) for an outstanding judgment. He claims the judgment had been paid, but did not provide any corroborating documentation.⁷

In addition to his outstanding income tax obligations, the SOR also alleges that Applicant owes \$7,000 for 12 delinquent accounts (SOR ¶¶ 2.d through 2.n). Applicant admits that he owes the accounts alleged in SOR ¶¶ 2.d through 2.i. In his answer, he claimed that the debts were consolidated with a debt repayment program. At the hearing, Applicant testified that he signed up for the program, but did not execute a

⁴ Tr. 24-29; GE 3, 5, 8-9.

⁵ Tr. 24-25, 30-32; GE 6-7.

⁶ Tr. 32-39, 46; Answer; AE A-E.

⁷ Tr. 33, 39-40, 47; GE 10; AE G-H.

repayment plan. He provided documentation that he has made arrangements to resolve SOR ¶ 1.e, the deficiency balance on an automobile loan. He plans to work additional hours to pay the \$1,226 debt. Applicant denies owing the debts alleged in SOR ¶¶ 1.j through 1.n as he is not familiar with the accounts. He believes that the debts may be attributed to identify theft. He did not provide any documentation to establish that he filed an identity theft complaint or that he challenged the debts in question with the credit reporting agencies. The alleged delinquent accounts remain unresolved.⁸

Currently, Applicant provides the only source of income for his household, which includes his partner and their four children, ages 27, 25, 21, and 15. After paying his recurring bills, Applicant has approximately \$200 in disposable income each month. He hopes his partner, who has been unemployed since April 2018, is able to secure employment in the near future.⁹

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 to be 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, administrative judges apply the guidelines 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 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the 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." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

⁸ Tr. 40-42, 48-49; GE 2, 11-16; AE I-J.

⁹ Tr. 45-52.

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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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

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. The SOR alleges Applicant’s criminal history, 10 charges, including 2 convictions, between 1990 and 2012. This adverse information raises concerns under the criminal conduct and alcohol consumption guidelines, but given the passage of time, the alleged incidents are insufficient for an adverse determination under either rubric. However, when considered as a whole, the incidents support 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.¹⁰ However, the record contains sufficient evidence to mitigate the personal conduct concerns.

Of the 10 alleged arrests, 5 are minor incidents (1.a, 1.b, 1.g, 1.i, 1.j) that do not reflect negatively on Applicant’s security worthiness.¹¹ While he was involved in the incidents alleged in SOR ¶¶ 1.a, 1.b, and 1.g, he was not the instigator or primary actor. While the traffic violations alleged in SOR ¶¶ 1.i and 1.j could suggest a disregard for the laws, rules, and regulations, it appears that SOR 1.i was unintentional and ¶ 1.j was the result of an administrative snafu. However, the remaining five incidents, SOR ¶¶ 1.c - 1.f, and 1.h, all involving driving under the influence of alcohol, raise concerns about Applicant’s alcohol consumption and its impact on his judgment. His multiple instances of driving under the influence of alcohol also shows a disregard for laws, rules, and regulations. However, these incidents are mitigated by the passage of time.¹²

¹⁰ AG ¶ 16(c).

¹¹ AG ¶ 17(c).

¹² AG ¶ 17(d).

Applicant's last alcohol-related incident occurred over six years ago. Since then, he has acknowledged his alcohol problem and recognized his behavior was incompatible with his professional responsibilities and duties. He has abstained from alcohol for four years, making recurrence of similar criminal conduct unlikely.¹³

Guideline F, Financial Considerations

Failure to meet one's 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 or sensitive information.¹⁴ The SOR alleges Applicant's failure to file his federal and state income tax returns for 2010, 2011, 2012, 2013, 2014, and 2015 and that he has approximately \$7,000 in unresolved delinquent debts. The record is sufficient to establish the Government's *prima facie* case that Applicant has a history of not meeting his financial obligations, and that he has failed to timely file his federal and state income returns, as required.¹⁵

Applicant's failure to file was caused by his own negligence and remains an ongoing problem. He failed to produce evidence that his outstanding federal and state income returns have been filed. His post-hearing efforts to establish an installment agreement with the IRS is not sufficient to establish that his tax problems are remedied or under control. Applicant also failed to establish a record of debt repayment or that he has filed disputes with the credit reporting agencies to challenge the accounts he believes are the result of identity theft. The delinquent debts alleged in the SOR remain unresolved and he does not have a plan to resolve them.

Based on the record, doubts remain about Applicant's ongoing suitability for access to classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(d). Applicant takes his position as a security guard seriously and his role has helped him mature and grow into a more responsible adult. However, he has not done enough to establish financial rehabilitation.

¹³ AG ¶ 17(d).

¹⁴ AG ¶ 18.

¹⁵ AG ¶¶ 19(c) and (f).

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, Personal Conduct:	FOR APPLICANT
Subparagraphs 1.a – 1.j:	For Applicant
Paragraph 2, Financial Considerations:	AGAINST APPLICANT
Subparagraphs 2.a – 2.n:	Against Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the national interest to grant Applicant a security clearance. Applicant's eligibility for access to classified information is denied.

Nichole L. Noel
Administrative Judge