



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



In the matter of:)
)
) ISCR Case No. 18-00030
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Department Counsel
For Applicant: *Pro se*

August 29, 2019

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of the Case

On August 22, 2016, Applicant submitted a security clearance application. (e-QIP) On April 23, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations and Guideline J, Criminal Conduct. The action was taken under Executive Order (EO) 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 for cases after June 8, 2017.

Applicant answered the SOR on May 22, 2018, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on April 30, 2019. The case was reassigned to me on June 18, 2019. The Defense Office of Hearings and Appeals issued a notice of hearing on May 6, 2019, and the hearing was convened as scheduled on June 24, 2019. The Government offered nine exhibits,

referred to as Government Exhibits 1 through 9, which were admitted without objection. The Applicant offered fourteen exhibits, referred to as Applicant's Exhibits A through N, which were admitted without objection. Applicant testified on his own behalf. The record remained open until close of business on July 1, 2019, to allow the Applicant the opportunity to submit additional supporting documentation. Applicant submitted one Post-Hearing Exhibit, referred to as Applicant's Post-Hearing Exhibit A, which was admitted without objection. DOHA received the transcript of the hearing (Tr.) on July 8, 2019.

Findings of Fact

Applicant is 31 years old. He is unmarried. He has a Bachelor's degree. He holds the position of Custodial Clean Room Attendant with a defense contractor. He seeks to obtain a security clearance in connection with his employment in the defense industry. He has never held a security clearance before.

Paragraph 1 Guideline F – Financial Considerations The Government alleges that the Applicant is ineligible for clearance because he is financially overextended and at risk of having to engage in illegal acts to generate funds.

The SOR alleges that Applicant is indebted to six separate creditors totaling approximately \$15,000 in debts, and \$12,000 in traffic fines owed to a state for a total of \$27,000. In his Answer, Applicant admits each of the allegations set forth in the SOR. Credit reports of the Applicant dated September 22, 2016; December 1, 2018; and October 11, 2018, reflect that each of these debts were owing at one point. (Government Exhibits 3, 4 and 5.)

Applicant admits that he made many poor decisions, financial and other wise, as a teenager and young adult. He hung around the wrong group of people and got himself into a lot of trouble with the law. In 2009, when he was charged with Burglary, he went to jail for two days and realized that he needed to change his life before it was too late. Since then Applicant has been working to improve himself and to show responsibility and good judgment.

Applicant lives with his parents. He pays rent of \$600 monthly to his parents. He also makes his car payments of \$335 each month on time, his cell phone bill of \$120 a month, and pays his insurance on a regular basis. Applicant explained that his financial problems began when, as a full-time student, he was in a motorcycle accident and had three broken bones. He was taken to the emergency room with no medical insurance. He was billed accordingly. Applicant was unaware that he could have qualified for emergency care or Medi-Cal. As a result of this accident, Applicant fell behind on several of the debts listed in the SOR.

In July 2017, Applicant began working for his current employer. He enjoys his work and is well liked. He currently bring home between \$3,000 and \$3,200 a month. Since 2017, he has been working diligently to resolve his delinquent debt. He borrowed

some money from his mother to resolve his delinquent medical debts and has already repaid her with his refunds from his income tax returns.

The following delinquent debts listed in the SOR became owing and are now paid off in full, or are being paid in regular systematic monthly payments.

1.a. Applicant was indebted to a creditor for an account placed for collection in the approximate amount of \$2,477. This was for his bail bond. Applicant has paid the debt off in full. (Tr. pp. 38-39 and Applicant's Exhibit H.)

1.b. Applicant was indebted to a creditor for a medical account that was placed for collection in the approximate amount of \$90. This was a medical bill from the motorcycle accident. Applicant has paid the debt off in full. (Tr. p. 39 and Applicant's Exhibit I.)

1.c. Applicant was indebted to a creditor for a medical account placed for collection in the approximate amount of \$4,771. This was a medical bill from the motorcycle accident. Applicant has paid the debt off in full. (Tr. p. 40 and Applicant's Exhibit J.)

1.d. Applicant was indebted to a creditor for a medical account that was placed for collection in the approximate amount of \$5,260. This was a medical bill from the motorcycle accident. Applicant has paid the debt off in full. (Tr. p. 40 and Applicant's Exhibit K.)

1.e. Applicant was indebted to a state for traffic fines assessed against him in 2014 for an account that was placed for collection in the approximate amount of \$1,260. This was for unpaid traffic tickets and interest. Applicant has paid the debt off in full. (Tr. p. 41 and Applicant's Exhibit M.)

1.f. Applicant was indebted to a state for traffic fines assessed against him in 2017 in the approximate amount of \$878. This was for unpaid traffic tickets and interest. Applicant has paid the debt off in full. (Tr. p. 41 and Applicant's Exhibit M.)

Paragraph 2 Guideline J – Criminal Conduct The Government alleges that the Applicant is ineligible for clearance because he engaged in criminal activity that creates doubt about a person's ability or willingness to comply with laws, rules and regulations.

Applicant also engaged in a litany of criminal activity over the past fifteen years. He has no excuses for this misconduct. He was simply immature and irresponsible. (Government Exhibits 6, 7 and 8.)

2.a. In June 2001, Applicant was charged with Drunk in Public. Applicant denies this incident. He was only in junior high school at the time. (Tr. pp. 44 - 45.) This allegation is found for the Applicant.

2.b. In December 2002, Applicant was charged with Speeding and Driving While on a Suspended License. Applicant denies this incident. Applicant was not old enough at

this time to possess a driver's license. (Tr. p. 45.) This allegation is found for the Applicant.

2.c. In about November 2005, Applicant was charged with Driving While on a Suspended License. Applicant denies the incident. He did not receive a Driver's License until he was eighteen years old in 2010. (Tr. p. 46) This allegation is found for the Applicant.

2.d. In about June 2006, Applicant was charged with Possession of Marijuana. Applicant admits the incident. Applicant admits that he was cruising in a car with some friends when he had marijuana in his possession. He was pulled over by the police and cited. (Tr. p. 47-48.)

2.e. In about June 2009, Applicant was charged with Speeding, Failure to Appear and Failure to Pay. Applicant admits that he was speeding and he did not have the money to pay the fines. (Tr. p. 49.)

2.f. In about September 2009, Applicant was charged with Speeding and Possession of Marijuana. Applicant does not remember the specifics but admits that during this time in his life he engaged in such conduct. (Tr. p. 50.)

2.g. In about October 2009, Applicant was charged with Burglary, Selling Marijuana, and Driving Without a License. Applicant explained that when he was arrested he had \$600 in his pocket because he had just been paid at work where he cleaned carpets. He was arrested for burglary because he and his friends were breaking into cars. As a result of this offense, Applicant served two days in jail. (Tr. pp. 51-54.)

2.h. In about June 2012, Applicant was charged with Speeding. Applicant explained that he was driving 90 miles an hour, about 10 miles over the speed limit, when he was pulled over. His driver's license was suspended. (Tr. p. 55.)

21.i. In about September 2012, Applicant was charged with Speeding and Driving on a Suspended License. At the time, Applicant was going to school and working and chose to drive on a suspended license. (Tr. pp. 55-57.)

2.j. In about October 2013, Applicant was charged with Driving Without a License. Applicant stated that he lost his license due to the number of speeding violations he had. He currently has a valid driver's license. He has not had a traffic violation of any sort for the past five years. (Tr. pp. 58.)

2.k. In about January 2014, Applicant was charged with Driving with a Suspended License and Driving an Unregistered Vehicle. Applicant believes that he was initially pulled over for having dark tint on his front seat windows and cited. (Tr. pp. 59-60)

2.l. In April 2017, Applicant was charged with Failure to Provide a Child Restraint, Failure to Appear. Applicant denies this allegation as he states that this has never occurred. (Tr. p. 60.)

Applicant credibly expressed that since 2014 his life has changed for the better. He has really grown up and moved forward in a positive direction by adhering to rules and regulations and overall being a more responsible individual.

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 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(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 national security eligibility 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.

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.

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 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 F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18, as follows:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Three are potentially applicable in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do do; and
- (c) a history of not meeting financial obligations.

Applicant has experienced financial hardship due to an unexpected motorcycle accident where he needed emergency medical care and had no insurance. He was also financially irresponsible. The evidence is sufficient to raise the above disqualifying conditions.

Four Financial Considerations mitigating conditions under AG ¶ 20 are potentially applicable:

- (a) 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;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

Since June 2017, Applicant has been working hard to pay off his delinquent debt. He has paid off all of the debt listed in the SOR. Applicant clearly understands the responsibilities that come along with possessing a security clearance. He has demonstrated financial responsibility by resolving his delinquent indebtedness. He has acted maturely, reasonably and responsibly, and has demonstrated good judgment, reliability, and trustworthiness. The Financial Considerations concern has been mitigated.

Guideline J, Criminal Conduct

The security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable:

(a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and

(b) evidence (including, but not limited to , a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

Applicant engaged in a number of criminal activities as a young adult that resulted in him being charged, convicted, fined and even sentenced to jail. The aforementioned disqualifying conditions have been established.

Four Criminal Conduct mitigating conditions under AG ¶ 32 are potentially applicable:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (b) the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (c) no reliable evidence to support that the individual committed the offense; and
- (d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Applicant has been a nuisance for many years. He simply disregarded many of the laws of our society. He did whatever he wanted to do at the time without regard for the consequences. This shows extreme poor judgment. Until he spent time in jail, he did not absorb the seriousness of his actions. His experience in jail in 2009, whatever it was, made a dramatic impact on him, and helped him to want to be a better person and live a better life. Although he continued to violate some traffic laws after that, he did not engage in any other criminal activity. Five years has now passed without a violation of the law in any form or fashion. Applicant understands that if he is to possess a security clearance he must demonstrate that he is a mature individual who consistently follows all rules and regulations. Applicant looks to be a changed man. At this time, he has demonstrated sufficient evidence of rehabilitation. AG ¶ 32(a) and (d) are applicable and provide full mitigation. In the event that Applicant makes poor decisions in the future and deviates from this positive path, his security clearance will be in immediate jeopardy.

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 relevant 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 have incorporated my comments under Guidelines F and J in my whole-person analysis. Overall, the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Financial Considerations security concerns.

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 F:	FOR APPLICANT
Subparagraphs 1.a.: through 1.f.:	For Applicant
Paragraph 2, Guideline J :	FOR APPLICANT
Subparagraphs 1.a.: through 1.l	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 national security eligibility for a security clearance. Eligibility for access to classified information is granted.

Darlene Lokey Anderson
Administrative Judge