



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



In the matter of:)
)
) ISCR Case No.18-00153
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

12/17/2018

Decision

BENSON, Pamela, C., Administrative Judge:

Applicant failed to mitigate the security concerns about his illegal drug use, falsifications, and delinquent debts. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted security clearance applications (SCA) on December 20, 2005, and September 19, 2016. On January 31, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued him a Statement of Reasons (SOR) detailing security concerns under Guideline H (Drug Involvement), Guideline E (Personal Conduct), and Guideline F (Financial Considerations). The action was taken under Executive Order (EO) 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) effective within the DOD on June 8, 2017.

Applicant answered the SOR on March 27, 2018, and elected to have his case decided on the written record. He did not submit any documentation with his Answer. On July 11, 2018, Department Counsel submitted the Government's file of relevant material (FORM). Applicant received it on July 17, 2018. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. The Government's evidence is identified as Items 1 through 9. Applicant did not provide a response to the FORM, object to the Government's evidence, or submit documents. The Government's evidence is admitted. The case was assigned to me on October 16, 2018.

Findings of Fact

After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 49 years old. He has been employed by his present employer, a federal contractor, since 2005. He earned a bachelor's of science in business management in October 2004. He has been married since 2000 and has two children, ages 18 and 15. He enlisted in the U.S. Air Force in March 1988. In June 1991, he received a general discharge due to his marijuana use while in the military. (Items 4, 5)

Applicant was interviewed in September 2017 by an authorized DOD investigator for his background security clearance investigation. He told the investigator that he began using marijuana in 1986 while he was in high school. He admitted using marijuana on approximately three occasions while he was in the military. Since his discharge from the military in 1991, he admitted that he continued to smoke marijuana on a monthly basis to the present time. Prior to October 2015, Applicant would purchase marijuana from an individual's home. Since October 2015, he obtained a medical marijuana card and now purchases his marijuana from the dispensary, since it is legal to do so in his state. Applicant admitted he falsified his drug answers on the SCA because he was afraid the information would have an adverse impact on his security clearance. Applicant stated that he no longer plans to use marijuana because he now has no desire to use it. (Item 9)

On the 2005 SCA, Applicant only disclosed marijuana use in March 1990. He intentionally failed to disclose his current use of marijuana, and that he used cocaine in at least 2000. Applicant voluntarily entered treatment in 2000 due to his use of cocaine, but he did not disclose that information either. On the 2016 SCA, Applicant disclosed that he used marijuana in the military, and he disclosed his voluntary treatment in 2000 for his use of cocaine. Applicant intentionally failed to disclose his current use of marijuana, to include after he was granted a DOD security clearance in January 2007. (Items 4, 5)

The DOD investigator also questioned Applicant about the delinquent accounts he listed on his 2016 SCA. Applicant stated that beginning in about December 2010, he could no longer afford to make regular payments on these financial accounts after his

spouse had her hours reduced by her employer. Applicant admitted that he has not paid any of his delinquent creditors. He was currently doing research into the possibility of consolidating his delinquent debt, but he had not yet taken any action to do so. (Item 9)

Drug Involvement

SOR ¶ 1.a alleges that while Applicant was on active duty in the U.S. Air Force, and after being granted a DOD security clearance, he used marijuana between August 1990 and June 1991. Applicant admitted this allegation in his SOR response. (Items 1, 3)

SOR ¶ 1.b alleges that Applicant tested positive for marijuana while on active duty in April 1991. He received non-judicial punishment and the U.S. Air Force gave Applicant a general, under honorable conditions discharge (misconduct – drug use), in June 1991. Applicant admitted this allegation in his SOR response. (Items 1, 3)

The third SOR allegation (¶ 1.c) alleges that Applicant continued to use and purchase marijuana from June 1991 to at least September 2017, to include after he had been granted a DOD security clearance in January 2007. Applicant admitted this allegation in his SOR response. (Items 1, 3)

Personal Conduct

SOR ¶ 2.a alleges that Applicant falsified his 2016 SCA by intentionally failing to disclose that he had used marijuana within the last seven years, and he deliberately failed to divulge he had continued to use marijuana after he had been granted a DOD security clearance in January 2007. Applicant admitted this allegation in his SOR response. (Items 1, 3)

The second SOR allegation (¶ 2.b) alleges that Applicant deliberately failed to disclose on his 2005 SCA that he had used marijuana within the last seven years, and that he had also used cocaine in at least 2000. Applicant admitted this allegation in his SOR response. (Items 1, 3)

Financial Considerations

The SOR alleges that Applicant is indebted on six delinquent accounts in the total approximate amount of \$24,292. (Items 1, 6-8)

SOR ¶ 3.a alleges that Applicant is indebted on a credit card account that has been placed for collection in the approximate amount of \$8,708.00. As of January 2018, the account remained delinquent. Applicant admitted this allegation in his SOR response. (Items 1, 3)

SOR ¶ 3.b alleges that Applicant is indebted on a credit card account that has been charged off in the approximate amount of \$4,898.00. As of January 2018, the

account remained delinquent. Applicant admitted this allegation in his SOR response. (Items 1, 3)

SOR ¶ 3.c alleges that Applicant is indebted on a credit card account that has been placed for collection in the approximate amount of \$4,283.00. As of January 2018, the account remained delinquent. Applicant admitted this allegation in his SOR response. (Items 1, 3)

SOR ¶ 3.d alleges that Applicant is indebted on a credit card account that has been placed for collection in the approximate amount of \$4,172.00. As of January 2018, the account remained delinquent. Applicant admitted this allegation in his SOR response. (Items 1, 3)

SOR ¶ 3.e alleges that Applicant is indebted on a credit card account that has been charged off in the approximate amount of \$2,041.00. As of January 2018, the account remained delinquent. Applicant admitted this allegation in his SOR response. (Items 1, 3)

SOR ¶ 3.f alleges that Applicant is indebted for a utility service account that has been placed for collection in the approximate amount of \$190.00. As of January 2018, the account remained delinquent. Applicant admitted this allegation in his SOR response. (Items 1, 3)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are 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, 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. 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 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 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, and 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 that an applicant may deliberately or inadvertently fail to 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 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 and Substance Misuse

The security concern relating to the guideline for drug involvement and substance misuse is set out in AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual’s reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person’s ability or willingness to comply with laws, rules, and regulations.

AG ¶ 25 provides conditions that could raise security concerns. The following is potentially applicable:

- (a) any substance misuse;
- (b) testing positive for an illegal drug;

(c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and

(f) any illegal drug use while granted access to classified information or holding a sensitive position.

Applicant used and purchased marijuana beginning in 1986 until September 2017, including while he in the military and after having been granted a DOD security clearance in January 2007. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from drug involvement. The following mitigating conditions under AG ¶ 26 are potentially applicable:

(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; and

(b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions to overcome the problem, and has established a pattern of abstinence, including, but not limited to: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were being used; and (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility; 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.

Applicant used marijuana for 31 years, ending in September 2017. Applicant has not submitted any evidence of his abstinence from using marijuana. Although Applicant's recent use of marijuana was permitted under state law, such conduct nonetheless violated Federal law and DOD policies.¹ There is no documentation that Applicant has completed, or is currently involved in, a recognized substance abuse treatment program. Mitigating conditions AG ¶ 26(a), (b) and (d) do not apply.

¹ The Director of National Intelligence reaffirmed that the disregard of federal law concerning use, sale, or manufacture of marijuana is relevant in national security determinations regardless of changes to state laws concerning marijuana use in a memorandum dated October 24, 2014.

Guideline E: Personal Conduct

AG ¶ 15 expresses the security concern for 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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during the national security investigative or adjudicative processes. . . .

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following potentially applicable:

(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 national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant deliberately failed to disclose his illegal drug use on an SCA he completed in 2005, and on another SCA he completed in 2016. The above disqualifying condition applies.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant knew that he was required to list his illegal drug history on his SCAs. He did not make prompt, good-faith efforts to correct the falsifications on his 2005 SCA and 2016 SCA. He eventually disclosed his marijuana use during his September 2017 background interview, but over a year had passed since the submission of his falsified 2016 SCA. Applicant admitted to the DOD investigator that he did not want to disclose his adverse illegal drug use information on the SCA due to the possible negative consequences to his DOD security clearance. Applicant's deliberate omissions demonstrate a pattern of deception, and his conduct casts doubt on his reliability, trustworthiness, and good judgment. There is insufficient evidence to apply mitigating conditions AG ¶¶ 17(a), and (c).

Guideline F: Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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. . . .

AG ¶ 19 includes two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts"; and "(c) a history of not meeting financial obligations." The evidence established AG ¶¶ 19(a), and 19(c). Further inquiry about the applicability of mitigating conditions is required.

Five 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, 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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant failed to provide any documentary evidence of payments, payment arrangements, or other debt-resolution efforts. Similarly, he provided no documentary evidence demonstrating financial responsibility and good judgment. None of the mitigating conditions apply. Financial considerations security concerns are not mitigated.

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(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 H, E, and F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is 49 years old and has worked for his current employer since January 2005. He was issued a DOD security clearance in January 2007. In light of his lengthy drug history, Applicant's recent decision to abstain from marijuana does not mitigate the drug involvement and substance misuse security concerns. Applicant's repeated falsifications cast serious doubt on his trustworthiness and judgment. There is no documentary efforts showing that Applicant has acted responsibly in addressing his delinquent debts. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline H (Drug Involvement and Substance Misuse), Guideline E (Personal Conduct), and Guideline F (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:	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-2.b:	Against Applicant
Paragraph 3, Guideline F:	AGAINST APPLICANT
Subparagraphs 3.a-3.f:	Against Applicant

Conclusion

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

PAMELA C. BENSON
Administrative Judge