



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



In the matter of:)
)
) ISCR Case No. 18-01212
)
Applicant for Security Clearance)

Appearances

For Government: Erin Thompson, Esq., Department Counsel
For Applicant: *Pro se*

07/19/2019

Decision

BENSON, Pamela C., Administrative Judge:

Applicant failed to mitigate the security concerns arising from his financial problems, alcohol-related charges, and his recent misuse of prescription medication while holding a Department of Defense (DOD) security clearance. National security eligibility for access to classified information is denied.

Statement of the Case

On December 21, 2016, Applicant completed and signed his security clearance application (SCA). On July 6, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (Financial Considerations) and Guideline G (Alcohol Consumption). 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 *National Security Adjudicative Guidelines* (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on August 9, 2018, and requested a hearing before an administrative judge. He admitted all of the SOR allegations, and he attached two

receipts, showing two debts were paid the day before he completed his SOR response. (SOR ¶¶ 1.d and 1.e.) He also attached six letters of recommendation. On February 28, 2019, the case was assigned to me. On March 5, 2019, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for March 22, 2019. The hearing was held as scheduled.

During the hearing, Department Counsel offered Government Exhibits (GE) 1-8. Applicant testified, called a witness, and offered 13 documents, Applicant Exhibits (AE) A through M into evidence. I admitted all proffered exhibits into evidence without objection. I held the record open for one month in the event either party wanted to submit additional documentation. DOHA received the hearing transcript (Tr.) on April 5, 2019. On April 24, 2019, Applicant provided three additional documents, AE N to P, which I entered into evidence without objection. The case closed on April 24, 2019.

Procedural Matters

During the hearing, Department Counsel requested the SOR be amended to include Paragraph 3, Guideline H (Drug Involvement and Substance Misuse). Specifically, SOR ¶ 3.a to state: You used Xanax that was not prescribed to you, on at least three occasions to at least 2018, while you held a DOD security clearance. This adverse information is in the record, and was also confirmed by Applicant's testimony. I granted the amendment without objection. (Tr. 69-73, 85-86; GE 2)

Findings of Fact

Applicant is 45 years old. He earned a bachelor's degree in 1996. He is not currently married, but he has been with his girlfriend for over 20 years, and they have four children between the ages of 12 and 23. The oldest daughter is not Applicant's biological daughter, but he claims her as his own child. Since June 1996, he has been employed full time for different defense contractors, with no periods of unemployment. He currently works as a senior systems administrator, and he has held a DOD security clearance since 1996. His annual salary is approximately \$82,000. (Tr. 10-11, 22, 37-39, 76; GE 1)

Financial Considerations

Applicant has suffered financial problems over a long period of time. He filed for a Chapter 13 bankruptcy in 2008 when his residence was going into foreclosure. In approximately 2013, he finalized his Chapter 13 bankruptcy. Shortly after the bankruptcy was finalized, he suffered financial problems due to being the only source of income for a large family. Additionally, Applicant had to pay taxes in tax year 2015 for the \$25,000 his mortgage holder forgave from his mortgage. The 1099 placed him in a higher tax bracket, and he could not pay the taxes he owed to the Internal Revenue Service (IRS). (Tr. 42-44)

In 2008, Applicant changed his tax withholding status with his employer's payroll office on the advice of his bankruptcy attorney. After his bankruptcy was finalized in 2013, Applicant did not update his tax withholding status, and continued to have insufficient

taxes deducted from his paycheck. This pattern continued for a number of years to at least 2016. He admitted that he always filed his state and Federal tax returns timely, but he was unable to pay the amount of taxes due with his income tax filings. Applicant also cashed out his 401K from a previous employer, which contributed to his tax issues. He used the money to remodel his house and pay for his daughter's graduation party. (Tr. 17, 51-53, 80-81; GE 1, GE 5)

SOR ¶ 1.a alleges that Applicant owes \$4,860 for a personal loan he took out in about 2015 to have new floors put into his home. He was to make monthly payments of about \$145 for two years with 0% interest. He made one payment and did not make any other payments. Applicant contacted the creditor the day before his hearing. He requested a settlement offer and was waiting for settlement documentation. Applicant planned to make payments in the near future to settle this account, and he indicated he would provide documentation within the one-month period the record was to be held open. On April 24, 2019, Applicant provided a copy of a settlement offer from the creditor. The letter dated March 22, 2019, showed that the creditor was willing to accept \$2,916.25, but the payment would have to be made by the March 29, 2019, or the settlement offer would be null and void. Applicant failed to provide any documentation showing that he settled this account. This debt has not been resolved. (Tr. 45-46; GE 2, GE 3, GE 4; AE N)

SOR ¶ 1.b alleges that Applicant owes \$2,154 for a credit card account charged-off as a bad debt. SOR ¶ 1.i is a duplicate of the same credit card debt that eventually resulted in a judgment filed against him in 2018. Applicant provided documentation that he settled this credit card debt after making two \$800 payments in late 2018. The debt alleged in SOR ¶ 1.b, and duplicated in ¶ 1.i, has been settled for less than the full value of the alleged debt. (Tr. 46-48; GE 3; AE E)

SOR ¶ 1.c alleges that Applicant owes \$927 for a utility account referred for collection. Applicant made a \$50 payment on this account a few days before his hearing, and he had just recently returned equipment to the creditor. He testified that the creditor needed to recalculate the balance of his account, and he would provide updated documentation within the one-month period the record was to be held open. On April 24, 2019, Applicant provided a copy of the creditor's statement showing that another \$50 payment was received in April 2019, and \$290.27 was credited to the account for the returned equipment. As of the date the record closed, the remaining balance owed to this creditor was \$536.28. (Tr. 48-49; GE 3, GE 4; AE G, AE O)

SOR ¶ 1.d alleges that Applicant owes \$141 for his car insurance. He provided documentation with his SOR response showing that he paid this debt. This delinquent account has been resolved. (GE 3, GE 4)

SOR ¶ 1.e alleges that Applicant owes \$102 for a medical account referred for collection. Applicant provided a receipt with his SOR response showing that this account was paid. This delinquent account has been resolved. (Tr. 49-50; GE 3)

SOR ¶ 1.f alleges that Applicant owes \$21,777 in delinquent Federal income taxes for tax years 2015 and 2016. Applicant stated he was in a repayment agreement with the Internal Revenue Service (IRS), but he fell behind on his monthly payments. He usually initiates a new repayment agreement with the IRS every year after tax season. At some point after the agreement plan is established, he finds he is unable to continue with the repayment plan. Applicant planned to obtain a new payment agreement with the IRS in April 2019. At the hearing, he indicated that he would provide documentation of his past tax payment history while the record was held open in his case. Applicant failed to provide documentation of his payment history with the IRS by the time the record closed. This Federal tax debt is outstanding, and is not currently being paid. (Tr. 50-56, 75-76; GE 5)

As of May 2018, the IRS tax transcript for tax year 2015 showed that Applicant owed \$14,353. His 2016 tax transcript showed that his delinquent tax debt was \$7,424.21. Applicant's 2017 tax refund was intercepted and applied to his delinquent accounts owed for tax years 2013, 2014, and the remainder of \$1,917 was applied to 2015. (Tr. 75; GE 5)

SOR ¶ 1.g alleges that Applicant owes \$2,466 for a state tax lien entered against him in 2017. Applicant believed the balance should now be around \$1,500 since his 2017 state tax refund was intercepted to pay this tax debt. Applicant failed to provide any documentation by the close of the record to support his claim. The state tax debt is outstanding, and the lien has not been released. (Tr. 56; GE 6)

SOR ¶ 1.h alleges that Applicant owes the city in which he resides approximately \$9,000 for unpaid real estate taxes for tax years 2008 through 2016. Applicant stopped paying his mortgage, which included escrow, when he filed Chapter 13 bankruptcy. After his bankruptcy was finalized, he did not make any real estate tax payments to the city, even though he received delinquent real estate tax notices. He admitted that he had been on a payment plan at one time, but the payment plan was withdrawn after he did not make timely payments. Applicant did not make any payments on this account for a long period of time until the day before his hearing when he made a \$50 payment on an account that now totaled \$12,000, with accruing interest and penalties. The city tax debt has not been resolved. (Tr. 57-58; GE 2; AE I, AE J)

Applicant cashed out his unused vacation pay in December 2018 for approximately \$2,300. He used the money to provide Christmas gifts to his family instead of paying off delinquent debt. Applicant does not have a monthly budget established, he does not have a savings account, and he has not participated in any financial counseling. He admitted that he still owes about \$20,000 for his student loans, but he recently requested a student loan forbearance. Applicant also admitted that he does not always pay his utilities in full each month, but he has made payment arrangements with his utility creditors to prevent his utilities being shut off. (Tr. 58-64, 76-77, 79-81; AE F)

Alcohol

SOR ¶ 2.a alleges that Applicant was arrested in March 2015 for speeding and operating a vehicle under the influence of alcohol (OVI). Applicant admitted that he pled

guilty to the OVI charge, and the speeding charge was dismissed. He was arrested while driving to the casino with his poker friends. Applicant was required to attend a three-day alcohol awareness course. (Tr. 65-66, GE 1, GE 2, GE 8)

SOR ¶ 2.b alleges that Applicant was arrested in May 2016 and charged with OVI and physical control. Applicant admitted that he was guilty of the physical control charge only. He had been at a bar watching a sporting event and drinking alcohol. He felt fine when he left the bar. His home was about seven miles away. While driving, Applicant realized that he could be arrested for OVI, so he pulled over and fell asleep in his car. The police arrived and arrested him. He was fined and paid court costs, and placed on five years of community control. (Tr. 66-68; GE 1, GE 2, GE 8)

SOR ¶ 2.c alleges that Applicant was arrested in April 2018 for physical control of vehicle while under the influence of alcohol. Applicant admitted that he was initially charged with physical control, but he pled guilty to an amended charge of reckless operation. He admitted that he had consumed alcohol and was trying to reconcile with his girlfriend when he was arrested. (Tr. 69-70; GE 8)

Misuse of Prescription Drugs

During Applicant's April 2018 arrest, the police found a green pill in his possession. It was determined that the green pill was "Xanax." Since Applicant did not have a prescription for the Xanax, he was also charged with possession of a drug (Schedule IV). This charge was subsequently dismissed. Applicant admitted that he obtained Xanax from his friend, and that he had used Xanax without a valid prescription on three or four occasions while he possessed a DOD security clearance. Applicant said he obtained the prescription drug to help him sleep. He has participated in security briefings over the years and he is aware that using a prescription drug without a valid prescription is against DOD policy. (Tr. 71-74; 85-87; GE 2)

Character Evidence

Applicant's girlfriend testified at the hearing. She confirmed Applicant is the sole source of income for the family. She observed his continuing efforts to pay the delinquent bills. She does not believe he is dependent on alcohol or illegal drugs. She testified that she is not currently employed, but she is currently searching for employment, and is also considering going back to school. (Tr. 89-94; AE)

Applicant provided four character reference letters at the hearing. One of the references stated: "To the best of my knowledge, [Applicant] has never broken any laws and has always been courteous and kind to co-workers and those in authority." (AE B) None of the character references mentioned that they were aware of the security issues alleged in Applicant's SOR. All four character references recommended Applicant be granted a top secret security clearance. (AE A, AE B, AE C, AE D)

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 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 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 not drawn inferences grounded on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under 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 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 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 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).

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 three disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts"; "(c) a history of not meeting financial obligations"; and "(f) ...failure to pay annual Federal, state, or local income tax as required." The evidence of record establishes AG ¶¶ 19(a), 19(c), and 19(f). Further inquiry about the applicability of mitigating conditions is required.

The SOR alleges eight delinquent accounts. Applicant has a history of financial and tax delinquencies that are not currently resolved. The above disqualifying conditions apply.

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.

None of the mitigating conditions fully apply. Applicant claimed that his income was not sufficient to cover the financial expenses of raising a large family. He also experienced Federal, state, and city tax issues from the unexpected 1099 income attributed to his \$25,500 mortgage deficiency, and the cash-out of his 401k. Other tax delinquencies developed from his failure to update his payroll tax withholding status for several years after his bankruptcy case was closed in 2013. Applicant failed to establish a workable budget for his family and lived beyond his means. He also failed to show any diligence in the responsible handling of his delinquent debts, especially once he finalized his previous bankruptcy case and was given a fresh start. He continued to create new debt despite being employed full time since 1996. Under the current circumstances, there are no clear indications that Applicant's financial and tax issues are being sufficiently resolved or under control. Financial considerations security concerns are not mitigated.

Although Applicant did not specifically mention his alcohol-related arrests impact on his finances, I am certain the combined cost of fines, fees and legal representation expenses have contributed to his financial problems as well.

Guideline G: Alcohol Consumption

AG ¶ 21 describes the security concern about alcohol consumption, "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 provides for two conditions that could raise a security concern and may be disqualifying as follows:

(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 the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder; and

(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder.

Applicant has three misdemeanor-level alcohol-related offenses in 2015, 2016, and 2018. AG ¶¶ 22(a) and 22(c) are established.

AG ¶ 23 lists four 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 judgment;

(b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;

(c) the individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; and

(d) the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

AG ¶¶ 23(a), 23(b), 23(c) and 23(d) are not established. Applicant's alcohol-related arrests are recent and demonstrate a pattern of questionable judgment. Other than a three-day alcohol awareness program that was court-ordered in 2015, there is no indication that Applicant has received treatment or counseling for his repeated alcohol-related offenses in 2016 and 2018. Guideline G security concerns are not mitigated.

Guideline H: Drug Involvement and Substance Misuse

AG ¶ 24 expresses the security concern for drug involvement:

The illegal use of controlled substances . . . 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.

I have considered the disqualifying conditions for drug involvement under AG ¶ 25 and the following are potentially applicable:

AG ¶ 25(a) any substance misuse; and

AG ¶ 25(f) any illegal drug use while granted access to classified information or holding a sensitive position.

Applicant used Xanax on three or four occasions without a valid prescription, and while he possessed a DOD security clearance. AG ¶¶ 25(a) and 25(f) are established.

I have considered the mitigating conditions under AG ¶ 26. The following 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;

(b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this 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 used; and

(3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement

Applicant has misused Xanax on more than one occasion, and as recently as April 2018. He admitted that he participated in annual security training, and was fully aware that the misuse of prescription medication is unacceptable for individuals possessing DOD security clearances. The first time Applicant admitted his misuse of a prescription drug to the Government was during cross-examination at his security clearance hearing. I find Applicant's use of Xanax is recent and demonstrates that he is unable to follow rules and regulations. His misuse of a prescription drug on three or four occasions while holding a security clearance shows he is unreliable and untrustworthy. Mitigating conditions AG ¶¶ 26(a) and 26(b) do not apply.

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 Guideline H and the AG ¶ 2(d) factors in this whole-person analysis.

The Federal government must be able to repose a high degree of trust and confidence in persons granted access to classified information. In deciding whether to grant or continue access to classified information, the Federal government can take into account facts and circumstances of an applicant's personal life that shed light on the person's judgment, reliability, and trustworthiness. Furthermore, security clearance decisions are not limited to consideration of an applicant's conduct during work or duty hours. Even if an applicant has a good work record, his off-duty conduct or circumstances can have security significance and may be considered in evaluating the applicant's national security eligibility.

Applicant is 45 years old. He lives with his girlfriend and they have four children, ages 12, 18, 21 and 23. Since June 1996, he has been employed full time for different defense contractors, with no periods of unemployment. He makes approximately \$82,000 a year.

Overall, Applicant has not learned from his mistakes. Since being employed full-time in 1996, he lived beyond his means and created significant debt. He filed a Chapter 13 bankruptcy in 2008, which was finalized in 2013. Applicant did not change his financial behavior after the bankruptcy was closed, and he did not prepare a workable budget for his family. He continued living beyond his means. When a person repeats their mistakes, it is reasonable to expect the development of new debts. Those delinquencies, to include significant tax debt, are not resolved today.

Applicant failed to learn from his first alcohol-related arrest in 2015. He was arrested for alcohol-related offenses again in 2016 and 2018. He misused a prescription drug on more than one occasion and as recently as 2018. He used Xanax despite being aware from his security training that using prescription drugs without a valid prescription was against Federal law and DOD policy. After evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the financial considerations, alcohol consumption, and drug involvement and substance misuse 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: | AGAINST APPLICANT |
| Subparagraph 1.a: | Against Applicant |
| Subparagraph 1.b: | For Applicant |
| Subparagraph 1.c: | Against Applicant |

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|----------------------------|-------------------|
| Subparagraphs 1.d and 1.e: | For Applicant |
| Subparagraphs 1.f-1.h: | Against Applicant |
| Subparagraph 1.i: | For Applicant |
| Paragraph 2, Guideline G: | AGAINST APPLICANT |
| Subparagraphs 2.a-2.c: | Against Applicant |
| Paragraph 3, Guideline H: | AGAINST APPLICANT |
| Subparagraph 3.a: | Against Applicant |

Conclusion

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

Pamela C. Benson
Administrative Judge