



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



In the matter of:)
)
) ISCR Case No. 18-01615
)
Applicant for Security Clearance)

Appearances

For Government: Benjamin Dorsey, Esq., Department Counsel
For Applicant: *Pro se*

07/23/2019

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant mitigated the security concerns under drug involvement and substance misuse, criminal conduct and personal conduct. He did not meet his burden to mitigate the financial considerations guideline. Eligibility for access to classified information is denied.

Statement of the Case

On August 24, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Adjudicative Guidelines F (financial considerations), H (drug involvement and substance misuse), J (criminal conduct), and E (personal conduct). The action was taken under Executive Order (Exec. Or.) 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) implemented by DOD on June 8, 2017.

Applicant responded to the SOR on October 7, 2018, and requested a hearing. The case was assigned to me on January 16, 2019. The Defense Office of Hearings

and Appeals (DOHA) issued a notice of hearing on April 1, 2019, scheduling the hearing for June 13, 2019. I convened the hearing as scheduled.

I marked the Government's discovery letter and its exhibit list as Hearing Exhibits (HE) I. Government Exhibits (GE) 1 through 6 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibit (AE) A, which was admitted in evidence without objection. Department Counsel amended SOR ¶ 1 to include a new allegation 1.i, pursuant to ¶ E3.1.17 of the Directive.

At Applicant's request and with no objection from Department Counsel, I left the record open until July 8, 2019. Applicant timely provided one document, which I marked as (AE) B, and admitted into the record without objection. Applicant requested a few more days and I extended the record until July 12, 2019. He submitted one more document, which was marked as AE C and admitted in evidence without objection. DOHA received the hearing transcript (Tr.) on June 25, 2019.

Findings of Fact

In response to the SOR, Applicant admitted all of the allegations. He is 33 years old. He is divorced and has four children. Applicant completed his security clearance application in June 2016. He has not previously held a security clearance. (GE 1)

Applicant graduated from high school in 2004 and attended a technical school, earning a degree in aviation in 2011. He has worked for his current employer as an electronic technician for eight years. He was unemployed for a period of six months in 2009. (GE 1)

Financial

The SOR ¶¶1.a-1.i allege two child support collection accounts; four collection accounts; one charged-off medical account, and an amended state tax debt for about \$1,600. Applicant claimed that he has been paying his child support (deduction from his pay check) and several other accounts. He stated that all his financial documents were lost in a car accident in the spring. (Tr. 12)

Applicant attributes the debts to his overextending himself while trying to take care of his family. He explained that he decided to put off some creditors to pay others. He realizes that a better approach would have been to contact the creditors and work out an agreement. (GE) 2 He stated that he has reduced his spending habits and concentrates on his expenses. Applicant now earns about \$65,000 a year, which depends on overtime. He is paid hourly. (Tr. 38) He has no savings and little in his checking account. He lives with his mother, and pays \$100 a month in rent. (Tr. 39) He uses his girlfriend's car and pays the car insurance. (Tr. 71) He has not obtained credit counseling. (Tr.57) He does not follow a budget.

As to SOR 1.a (\$13,000) and 1.b (\$2,677), Applicant admitted that he was delinquent in child support, but explained that \$432 is automatically deducted from his

pay each month. At the hearing, Applicant stated that he did not pay attention and money was not deducted for child support in 2004 to 2008. (Tr. 29-33) He does not know what the correct balances on his child support cases are at this time. (Tr. 36)

SOR 1.c is a wireless collection account in the amount of \$2,213. Applicant stated that he is now making payments in the amount of \$50 a month. (GE 2) He submitted one document that showed \$50 was debited from his bank account on June 18, 2019. He stated at the hearing that he has a \$400 balance, and he claims that he started paying in 2016. (Tr. 21, 43)

As to SOR 1.d, a collection account in the amount of \$1,742, for a security system, Applicant intends to pay the amount due on the account, but he has not had the money to do so yet. (Tr. 22)

SOR 1.e is a medical account in collection for \$828. He has not made any payments on the account. He believes that the bill was for hospital visits.

SOR 1.f is a charged-off account in the amount of \$455. He stated at the hearing that he is paying \$50 a month. (Tr. 23) He submitted no documentation. During his 2017 OPM interview, he stated that he would contact the creditor and make arrangements to pay the account in full. (GE 2)

SOR 1.g is a collection account for the same debt that is listed in 1.d. However, the amount is \$296. He stated that he would pay when he was able. (Tr. 23) He believes they were two separate accounts. (GE 2)

As to SOR 1. h, a collection account for \$600, Applicant stated that it has been paid. (Tr. 24) He submitted documentation that reflected a payment of \$25 that was made on October 6, 2018, showing a balance of \$149.32. During his 2017 investigative interview, he noted that there were two different accounts and that he cannot remember which one he has paid in full.

The amended SOR 1.i represents a paper that Applicant brought to the hearing. It is a letter dated November 21, 2018, showing a payment agreement for state taxes. The payment plan was established for a period of 16 months paying \$105.63 a month. (GE 6) At the hearing, Applicant explained that he has been paying every month. (Tr. 53) He had no documentation to support his claim.

Drug Involvement and Substance Abuse

The SOR alleges under AG ¶¶ 2.a-2.b that Applicant purchased marijuana on or about October 2017, and information set below under criminal conduct.

SOR 2.a alleges and Applicant admits that he purchased marijuana in October 2017. He explained that he was buying the marijuana for his girlfriend. He was instructed to stop at a rest stop off a major highway, where he purchased the marijuana (\$60) for his friend. (Tr. 58) As he was driving home, he was stopped by a police officer

for tinted windows. (GE 2, Tr. 62) The officer searched the car and found the marijuana in the glove compartment. Applicant stated that he does not use marijuana or any illegal drugs. (Tr. 62) Applicant received a criminal citation and made a plea agreement. (GE 5) He spent a night in jail. He has had this expunged from his record. He no longer associates with that friend. He understands that this was a “dumb mistake.” He did not report this incident to his FSO for fear of losing his job. (Tr. 64)

SOR 2.b alleges the criminal information in AG 3.a, that Applicant was charged with possession of marijuana in October 2017. This is the same incident as described above under Guideline H.

Criminal Conduct

SOR AG 3.a alleges that Applicant was charged in October 2017 for possession of marijuana. This has been discussed as cross-alleged under the above guideline.

SOR AG 3.b alleges the information as set forth in subparagraph 2.a. Again, this is the same incident in October 2017 to which Applicant admitted.

Personal Conduct

SOR AG 4.a cross alleges the information as set forth under paragraph 2.a and 3.a (drug involvement and criminal conduct) as adverse personal conduct under this guideline. This is the same information that has been addressed above.

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.”

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 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 Exec. Or. 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* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F (Financial Considerations)

The concern under this guideline is set out in AG ¶ 18:

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

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions, corroborated by his testimony and his credit reports establish three disqualifying conditions under this guideline: AG ¶¶ 19(a) (“inability to

satisfy debts”), 19(c) (“a history of not meeting financial obligations”) and 19(f) (“failure to file or fraudulently file annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.”)

The security concerns raised in the SOR may be mitigated by the following potentially applicable factors:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20 (g): the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant admitted and his credit reports confirm that he has been indebted for a period of time. He has been paying some child support but produced no documentation to confirm his assertion. Applicant was unemployed in 2009, but has been steadily employed since 2009. However, he has not acted responsibly. He has not received credit counseling nor does he use a budget. He submitted two receipts for a payment to two different accounts. Applicant submitted an agreement with the state as to payment of taxes dated November 2018, but there is no indication that he has paid any of the \$1,596. There is no indication if these were the only two payments. Due to the lack of evidentiary evidence submitted by Applicant, it is impossible to state that there are good-faith efforts or that his financial situation is under control. None of the mitigating conditions apply in this case.

Guideline H, Drug Involvement and Substance Misuse

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

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. *Controlled substance* means any "controlled substance" as defined in 21 U.S.C. 802. *Substance misuse* is the generic term adopted in this guideline to describe any of the behaviors listed above.

The guideline notes several conditions that could raise security concerns under AG ¶ 25. The following are potentially applicable in this case:

- (a) any substance misuse (see above definition); and
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant admits that he purchased marijuana in October 2017 for his girlfriend. He was arrested and charged with purchase of marijuana and possession of marijuana AG ¶¶ 25(a) and 25(c) are established.

Conditions that could mitigate the drug involvement and substance misuse security concerns are provided 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 or misuse is grounds for revocation of national security eligibility.

Applicant's incident was on one occasion, in 2017, when he made an extremely poor decision and bought marijuana for his girlfriend. He has not used any illegal drugs. He does not associate with anyone who uses marijuana. AG ¶¶ 26(a) and 26(b) apply.

Guideline J, Criminal Conduct

AG ¶ 30 expresses the security concern pertaining to criminal conduct:

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. I considered the following relevant:

(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 was arrested and charged in October 2017 for possession and purchase of marijuana for his girlfriend. AG ¶ 31(b) is established.

I have considered all of the mitigating conditions under AG ¶ 32 and considered the following relevant:

(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; 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's criminal conduct occurred in 2017. He has not had any arrests since. I find that so much time has elapsed since his criminal conduct occurred that it does not cast doubt on his current reliability, trustworthiness, and good judgment. Since 2017, he has established a good employment record with his current defense contractor. AG ¶¶ 32(a) and 32(d) apply.

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 national security investigative or adjudicative processes.

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

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports 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.

I find that AG ¶ 16(c) is mitigated under 17(c). The SOR allegations are cross-alleged as under 2.a and 3.a above. He admitted that he made a poor decision.

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, H, J, and E in my whole-person analysis.

Applicant credibly testified at the hearing. He goes to work each day and tries to support his family. He knows he has made mistakes in the past. He realizes it was dumb to agree to purchase marijuana for his girlfriend. He was credible in that he does not use illegal drugs. He had the charge expunged. He has tried to pay on some bills, but has not sufficient income. He stated that he lost paperwork in a car accident and did not submit sufficient documentation to mitigate the financial security concerns. His 2017 criminal incident was a one-time event.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the security concerns under drug involvement and substance misuse, criminal conduct, and personal conduct, but not 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 F: Subparagraphs 1.a - 1.i:	AGAINST APPLICANT Against Applicant
Paragraph 2, Guideline H: Subparagraphs 2.a - 2.b:	FOR APPLICANT For Applicant
Paragraph 3, Guideline J: Subparagraphs 3.a - 3.b:	FOR APPLICANT For Applicant
Paragraph 4, Guideline E: Subparagraph 4.a:	FOR APPLICANT For Applicant

Conclusion

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

Noreen A. Lynch
Administrative Judge