



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



In the matter of:)	
)	
)	ISCR Case No. 18-02286
)	
Applicant for Security Clearance)	

Appearances

For Government: Moira Modzelewski, Esq., Department Counsel
For Applicant: *Pro se*

08/07/2019

Decision

Curry, Marc E., Administrative Judge:

Appellant has been making payments towards the resolution of the debts in the Statement of Reasons (SOR) for the past 18 months. All of them except a nominal medical bill are in current status. Applicant last used marijuana nearly two years ago. Preoccupied with working two jobs, paying off his debt, and returning to college, he has no intention of resuming marijuana use in the future. I conclude he has mitigated the security concerns. Clearance is granted.

Statement of the Case

On October 19, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a SOR to Applicant, detailing the security concerns under Guidelines F, financial considerations, H, drug involvement, and E, personal conduct, explaining why it was unable to find it clearly consistent with the national security to grant security clearance eligibility. The DOD CAF took the action 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 *Nat. Sec. Adjudicative*

Guidelines for Determining Eligibility for Access to Classified Information (AG) effective within the DOD on June 8, 2017.

On October 23, 2018, Applicant answered the SOR, admitting all of the allegations and requesting a hearing, whereupon the case was assigned to me on March 7, 2019. On April 5, 2019, the Defense Office of Hearings and Appeals issued a notice of hearing, scheduling Applicant's case for April 25, 2019. The hearing was held as scheduled. I received four Government exhibits (GE 1 – GE 4) and three Applicant exhibits (AE A - AE C). The transcript (Tr.) was received on May 6, 2019.

Findings of Fact

Applicant is a 26-year-old single man. He works for a defense contractor as a shipping and receiving clerk. (Tr. 14) After Applicant graduated from high school, he enrolled in college. His parents agreed to help him finance the first three years of college, and he was to be solely responsible for the remainder. He attended college, but did not graduate. Working a minimum wage job, he was unable to keep up with his student loans.

By March 2018, Applicant was delinquent on five student-loan accounts totaling approximately \$40,000, as alleged in SOR subparagraphs 1.a through 1.e. (GE 3) Additionally, he had incurred two delinquent credit card debts totaling approximately \$3,500 (SOR subparagraphs 1.f and 1.g), and a delinquent \$50 medical bill (SOR subparagraph 1.g).

Applicant began his current job in November 2017. He continued working at his part-time job. Working both jobs enabled him to begin resolving his delinquent debts. He consolidated all of the student-loan debts in May 2018. One month later, he began making monthly \$138 payments. (AE A) He has been consistently making payments since then, and the student loan debts, as consolidated, are no longer in delinquent status.

As for the credit card debt alleged in SOR subparagraph 1.f, Applicant has made 11 payments totaling \$900, since May 2018. (AE B) He began resolving subparagraph 1.g, totaling \$472 through partial payments beginning in May 2018. (GE C) Unable to identify the current creditor of the medical bill alleged in SOR subparagraph 1.h, Applicant is looking into formally disputing it. (AE D)

Applicant's full-time job pays \$46,000 annually. In sum, he has approximately \$300 of monthly discretionary income. (Tr. 38) Recently, he started an auto-detailing business. Although he has yet to generate a profit, he intends to use any prospective income to help to continue to satisfy his debts. (Tr. 36)

Applicant smoked marijuana with varying degrees of frequency from 2011 to 2017. His use from 2011 to 2015 occurred while he was in college. He stopped using marijuana for approximately nine months in November 2016 before using it once more on his birthday in September 2017. He has not used marijuana since then.

Applicant now devotes his time to working and satisfying his debt. Typically, after one job ends at 4:00 pm, he goes “straight to the next job at 5:30 [pm].” (Tr. 42) Consumed with working multiple jobs, he has no time to socialize with friends with whom he used marijuana in the past. He has no intention of using marijuana in the future because “it’s not . . . conducive to the career that [he is] trying to have.” (Tr. 17)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall 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. 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 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline F: Financial Considerations

The security concerns about financial considerations are set forth in AG ¶ 18:

Failure or inability 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.

Applicant's financial delinquencies trigger the application of AG ¶¶ 19(a), "inability to satisfy debts," and 19(c), "a history of not meeting financial obligations." Since gaining a full-time, salaried job, Applicant has been steadily making payments towards the satisfaction of his delinquent debts. All of his debts are out of delinquent status except a nominal medical debt that is owed to a creditor that he cannot identify or locate. AG ¶ 20(d), "the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts," applies. I conclude Applicant has mitigated the financial considerations security concern.

Guideline H: Drug Involvement

Under this guideline, "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 ¶ 24) Applicant's history of marijuana use triggers the application of AG ¶ 25(a), "any substance misuse."

The majority of Applicant's marijuana use occurred while he was in college. He has not used it in nearly two years. In that time, he has gained a salaried position, continued to work at the part-time position that he held when he gained the salaried position, started a part-time business, and organized his finances, getting his debts out of delinquent status. This evidence indicates maturity, and firmly establishes the credibility of his contention that he will not abuse marijuana in the future. I conclude AG ¶ 26(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 . . .," applies. Applicant has mitigated the drug involvement security concern.

Guideline E: Personal Conduct

Under this guideline, “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.” (AG ¶ 15) Applicant mitigated the personal conduct security concern for the same reasons that he mitigated the drug involvement security concern, as discussed above.

Whole-Person Concept

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors under AG ¶ 2(d), as set forth below:

(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.

Given Applicant’s maturity, the passage of time since he last used marijuana, and the progress he has made in organizing his finances, I conclude he has mitigated the 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 – 1.h:	For Applicant
Paragraph 2, Guideline H:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraph 3.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Marc E. Curry
Administrative Judge