



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 19-00434
)
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: *Pro se*

February 10, 2020

Decision

Lokey Anderson, Darlene D., Administrative Judge:

On October 25, 2017, Applicant submitted a security clearance application (e-QIP). (Government Exhibit 1.) On May 2, 2019, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations and Guideline E, Personal Conduct. 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*, effective within the DoD after June 8, 2017.

Applicant answered the SOR on July 3, 2019, and requested a hearing before an administrative judge. The case was assigned to me on September 4, 2019. The Defense Office of Hearings and Appeals issued a notice of hearing November 6, 2019, and the hearing was convened as scheduled on December 4, 2019. The Government offered nine exhibits, referred to as Government Exhibits 1 through 9, which were admitted without objection. The Applicant offered eight exhibits, referred to as Applicant's Exhibits A through H, which were admitted without objection. Applicant

called three witnesses and testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on December 17, 2019.

Findings of Fact

Applicant is 47 years old, divorced and is living with his ex-girlfriend. He has two children from a previous marriage. He has a high school diploma and six months of college. He is employed by a defense contractor as a Welder. He is seeking to obtain a security clearance in connection with his employment.

Guideline F - Financial Considerations

The Government alleged that Applicant is ineligible for a clearance because he made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness, and ability to protect classified information.

The SOR identified seven delinquent debts totaling approximately \$30,184, showing a history of financial problems. Applicant admits each of the allegations set forth in the SOR under this guideline. Credit reports of the Applicant dated November 3, 2017; and January 9, 2019, confirm the outstanding debts. (Government Exhibits 8 and 9.) Applicant began working for his current employer in 2017.

In 1996, Applicant was convicted of Attempted Murder and was sentenced to thirteen years in Federal prison. He served 85% of his sentence, and was released for good time served in 2007. While in prison, Applicant took welding classes, and from 1999 to 2004, worked as a prison welder earning minimum wages. These monies were sent to his ex-wife to pay for child support. Upon his release from prison, Applicant was placed on parole for three years. About six months after being released from prison, Applicant met his 11 year old daughter for the first time since her birth. With her coming into his life, he spent money to help her with school supplies and other things she needed. In addition, because the Applicant had good credit, he was solicited by creditors who sent him credit cards. He took advantage of this situation. He also purchased a car for his son, who was 4 years old when Applicant went to prison, and was 15 years old when Applicant was released. In 2012, Applicant suffered a heart attack which caused his employer to eliminate his overtime hours and ultimately reduced his income. (Applicant's Exhibit F.) As a result, Applicant accumulated debt that he could not afford to pay.

Applicant and his girlfriend inherited a house from a sick and elderly man that they took care of before he died. (Applicant's Exhibit H.) Accordingly to the Applicant, the deed to the house was placed in the Applicant and his girlfriend's name, the house is paid off, and has equity of about \$450,000. (Tr. p. 95.) Applicant hopes to obtain a loan against the house in order to pay off his delinquent debts. (Applicant's Exhibit C.)

Since the man had no will or trust, the house must go through probate and Applicant has not been able to leverage it to obtain a loan.

1.a. A delinquent auto loan was charged off in the approximate amount of \$11,672. Applicant explained that he contacted the creditor and told them that he could no longer make the monthly payments of \$550. He gave the car back to the creditor, they sold it at auction and Applicant owes the deficiency amount of \$11,672. In June or July 2019, Applicant made two payments of \$200 each toward the debt but the creditor wanted a larger payment, and so he stopped the payments. (Applicant's Exhibit E, and Tr. pp. 66-68.)

1.b. A delinquent credit card debt was placed for collection in the approximate amount of \$6,145. Applicant contacted the creditor to make monthly payments of \$50 monthly, but the creditor would not accept such a low payment. Thus, the debt remains owing. (Tr. p. 72.)

1.c. A delinquent credit card debt was charged off in the approximate amount of \$5,042. Applicant started making payments of \$100 monthly which increased to \$200 monthly. Applicant has reduced the debt to about \$3,992.37. (Applicant's Exhibits D, and Tr. pp. 74-75.)

1.d. A delinquent credit card debt was charged off in the approximate amount of \$3,433. Applicant allowed his ex-wife to use his credit card to take their son on vacation and other things, and she did not pay the bill. Applicant realizes that it is his responsibility, but has not paid it yet. Applicant offered to pay the creditor \$50 monthly, but the creditor rejected the offer. Applicant plans to pay it when he gets a loan against the house he inherited. (Tr. p.p. 76-77.)

1.e. A delinquent credit card debt was charged off in the approximate amount of \$1,827. Applicant does not know for sure if it has been paid or not. (Tr. p. 78.) He offered to pay the creditor \$50 monthly, but the offer was rejected by the creditor. Applicant stated that he is in the process of getting a loan against the house he inherited to pay off this debt. (Tr. p. 79.)

1.f. A delinquent debt was charged off in the approximate amount of \$440. Applicant is not sure whether he has paid the debt yet. He offered to pay the creditor \$50 monthly but the offer was rejected by the creditor. Applicant intends on paying the debt when he gets the loan against the house he inherited. (Tr. pp. 79- 82)

1.g. A delinquent debt owed to an electronics store was past due in in the approximate amount of \$1,625. Applicant has not yet paid the debt, but intends on doing so when he gets the loan against the house he inherited. (Tr. p. 87.)

Guideline E – Personal Conduct

The Government alleged that Applicant is ineligible for a clearance because he engaged in conduct involving questionable judgment, lack of candor, dishonesty, or

unwillingness to comply with rules and regulations that raise questions about his reliability, trustworthiness, and ability to protect classified or sensitive information.

In 1996, Applicant was charged with Attempted Murder, Aggravated Mayhem, Torture, two counts of Kidnapping and Assault with a Deadly Weapon. Applicant was convicted of Attempted Murder and sentenced to thirteen years in prison. (Government Exhibit 7.)

Applicant currently resides with his girlfriend in the house that they both inherited. Applicant broke up with his girlfriend. In about July 2018, she moved her new boyfriend, and some of her other friends into the house to live. Applicant explained that on this occasion they were partying, and he was upset because they were not helping to pay any of the household bills. Applicant got into an argument with his ex-girlfriend. He stated that he started to work on some of the construction that was already in progress, namely hit the wall which caused a mirror to fall and break, and threw a bookshelf. At that time, a fight ensued and the police were called. The police saw blood on the floor. Applicant was arrested. On October 5, 2018, Applicant was charged with one count of Battery, against his ex-girlfriend, and one count of vandalism, against his other girlfriend. On October 9, 2018, the charges were dropped. (Applicant's Exhibits A and B, and Government Exhibits 3, 4, and 5.)

Three witnesses testified favorably on behalf of the Applicant, including his direct supervisor, the shop foreman, and a coworker. They all consider the Applicant to be honest, reliable and trustworthy. They have witnessed his outstanding work product, good character and consider him to be an asset to the team. They all hold security clearances and highly recommend him for one. They are aware of his past misconduct and why he is before this administrative judge. (Tr. p. 21 – 37.)

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 AG ¶ 2 describing 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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Directive ¶ E3.1.14, requires the Government to present evidence that establishes 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person who applies for access to classified information seeks to enter 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 relating to the guideline for Financial Considerations 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. 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. Two are potentially applicable in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant incurred delinquent debts that he could not pay. The evidence is sufficient to raise the above disqualifying conditions.

AG ¶ 20 provides conditions that could mitigate security concerns. I have considered each one of them set forth below:

- (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 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 has not yet obtained the loan against his house that he plans to use to pay his debts. Except for one debt, the others remain owing. He has not demonstrated that his financial problems have been resolved, or are being resolved, or that they are unlikely to recur. The mitigating conditions do not apply. Accordingly, this guideline is found for against Applicant.

Guideline E - Personal Conduct

The security concern for the personal conduct guideline is set out in AG ¶ 15:

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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

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

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a while-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;

(1) Untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information; and

(2) any disruptive, violent, or other inappropriate behavior.

AG ¶ 17 provides conditions that could mitigate security concerns. I have considered each of the mitigating conditions under AG ¶ 17 below:

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

(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;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

It is noted that Applicant's conviction for Attempted Murder occurred over twenty-four years ago. Since then, he has obviously worked hard to get his life back in order. He is commended for his progress. However, despite this progress, Applicant has continued to make some poor decisions that have adversely impacted his ability to obtain a security clearance. As recently as July 2018, Applicant was involved in a serious domestic altercation where the police were called to the home, and he was arrested for Battery and Vandalism. Although the matter was ultimately dismissed, incidents of this sort can never ever be affiliated with the Applicant. His overall character and conduct must consistently show pristine honesty, integrity, good judgment and reliability. Applicant's recent misconduct indicates questionable judgment, unreliability, and untrustworthiness, characteristics of an individual who does not meet the qualifications for access to classified information. None of mitigating conditions are applicable. Accordingly, this guideline is found against the Applicant.

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 facts and circumstances surrounding this case. I have incorporated my comments under

Guideline F and Guideline E in my whole-person analysis. Applicant is a 47 year-old man who has served eleven years in prison and who is now trying to put his life back together. He is currently working in the defense industry and would like the privilege of holding a security clearance. He is recognized for the achievements he has made, but much more work is needed. He must continue to mature and show the level of good judgment and responsibility required of an individual who is trusted with the national secrets. In 2018, just two years ago, Applicant was involved with police encounters wherein he was arrested for Battery and Vandalism upon his ex-girlfriends, one with whom he still resides. At this time, Applicant has not demonstrated that he can be trusted with the national secrets. This is not an individual with whom the Government can be confident to know that he will always follow rules and regulations, and do the right thing, even when no one is looking. He is not qualified for access to classified information, nor is it clear that the information will be properly protected. Applicant does not meet the qualifications for a security clearance.

Overall, the record evidence leaves me with many questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Financial Considerations and Personal Conduct security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline E:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	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 interest to grant Applicant national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge