



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



In the matter of:)
)
) ISCR Case No. 19-02221
)
Applicant for Security Clearance)

Appearances

For Government: Gatha Mann, Esq., Department Counsel
For Applicant: *Pro se*

03/04/2020

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. He successfully mitigated the security concerns under Guidelines, E, personal conduct, Guideline G, alcohol consumption, and Guideline J, criminal conduct. Eligibility for access to classified information is denied.

Statement of the Case

On October 16, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines E, personal conduct, F, financial considerations, G, alcohol consumption, and J, criminal 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 (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on November 8, 2019, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM), and Applicant received it on December 26, 2019. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of 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 case was assigned to me on February 26, 2020.

Findings of Fact

Applicant admitted all of the SOR allegations, except the allegation in ¶ 3.a. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 36 years old. He earned a bachelor's degree in 2008. He is not married and has no children. He was employed from May 2008 to October 2013, with a private company. He then worked from October 2013 to July 2016, for a federal contractor. He left this job because he was having difficulties with his alcohol use, and he voluntarily enrolled in an alcohol recovery program where he was a patient for one month. After his discharge, he was unemployed for eight months before starting work with his current employer in March 2017. (Items 2, 3, 4, 6)

Applicant was arrested in March 2010 for possession of marijuana. He was on probation for a year and completed a drug rehabilitation course. The charge was nolle prossed. During his August 2018 background interview, he told the government investigator that after his arrest he had no intention of being involved with illegal drugs again. He made changes in his life and found more positive outlets for his time. There is no evidence of subsequent drug involvement. (Item 5, 7)

Applicant was arrested for driving under the influence of alcohol (DUI) in August 2012. The charge was nolle prossed. He has had no other alcohol-related incidents. Applicant continued to consume alcohol after his arrest, drinking four to six drinks a night. He decided to address his alcohol consumption and voluntarily entered an alcohol rehabilitation program in July 2016. This coincided with him leaving his job and subsequent unemployment. He was diagnosed by a medical doctor with alcohol abuse disorder. He successfully completed the rehabilitation program. He indicated in his answer to government interrogatories that he has not consumed alcohol since August 2016. There is no evidence to the contrary. (Items 4, 5, 7)

Applicant completed a security clearance application (SCA) in August 2017. Section 22 asked if he had ever been charged with an offense involving drugs or alcohol. Applicant failed to disclose his marijuana arrest and his DUI. In his SOR answer, he explained that he misread the question believing it asked him if he had been convicted of these type of offenses. I found his explanation credible and conclude he did not intentionally fail to disclose the requested information. (Items 2, 3, 4, 5)

The SOR alleges 29 delinquent debts totaling approximately \$165,742. Applicant admitted owing all of the debts. He was confronted with many of these debts during his background interviews. He indicated his willingness to pay his debts and attributed them to poor decisions he made when he was consuming alcohol. He was going to look into the debts and work to resolve them. (Items 3, 4, 5, 8, 9)

In June 2019, Applicant began working with a law firm to help him dispute and settle his delinquent debts. He provided a copy of the agreement and information included to show he had disputed certain debts that were removed from his credit report. He has delinquent student loans that total approximately \$117,598 (SOR ¶¶ 1.a and 1.b; this amount is included in the overall delinquent debt balance). It appears he has two debts owed for vehicles (SOR ¶¶ 1.c-\$12,848 and 1.n-\$17,688); numerous medical debts (SOR ¶¶ 1.d-\$8,051; 1.i-\$351; 1.p-\$720; 1.s-\$409; 1.v-\$132; 1.x-\$92; 1.y-\$80; 1.z-\$80; 1.aa \$65; 1.bb-\$60 and 1.cc-\$39); delinquent rent (SOR ¶ 1.e-\$2,218); and other consumer and payday loans. (Items 2, 4, 5, 8, 9)

Applicant did not provide information that any of the alleged SOR debts have been settled or paid. The document he provided showed that nine debts were removed, presumably from his credit report. Only one debt removed may possibly be included in the SOR, but the only information noted is that the creditor is "medical." It does not specify the amount of the medical debt or the collector. The other debts removed do not appear to be those included in the SOR. Applicant did not provide any evidence to identify if any other debts removed were alleged in the SOR. He did not provide any other information about whether he has paid any of these debts, even the smallest ones. (Items 2, 4, 5, 8, 9)

During his background interview, Applicant indicated that his finances were stable, and he was working to better manage them. He did not provide a budget or any other information about his finances or any proof that he has paid or settled any of his delinquent debts. Applicant received his college degree in 2008. He provided no explanation for his failure to make payments on his student loans when due and while he was employed. He indicated to the government investigator that he was making arrangements to pay his student loans. He did not provide evidence that he has done so. (Items 4, 5)

Policies

When evaluating an applicant's suitability for national security eligibility, 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 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 states 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 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual 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).

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations; and

Applicant has delinquent debts and student loans that have not been paid or resolved. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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 initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

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

Applicant admitted he owed all of the debts alleged in the SOR. He contracted with a law firm in June 2019, but there is no indication that any of the SOR debts have been resolved or paid, even the smallest ones. There is no evidence he has a payment plan to resolve his delinquent students loans. Although he was employed after graduating from college, except for eight months, he did not provide evidence that he has made payments on his student loans. The evidence does not support that his debts were beyond his control. He did not provide evidence that he has had financial counseling. There is no evidence that he has made good-faith efforts to repay or resolve his debts. The evidence is insufficient to conclude that future financial issue are unlikely to recur. None of the above mitigating conditions apply.

Guideline G: Alcohol Consumption

AG ¶ 21 expresses the security concern for 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 describes conditions that could raise a security concern and may be disqualifying. I find the following to be potentially applicable:

(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

(d) Diagnosis by a duly qualified medical or mental health professional (e.g. physician . . .) of alcohol use disorder.

Applicant was arrested for DUI in 2012. In 2016, on his own volition, he voluntarily entered an alcohol rehabilitation program and was diagnosed by a medical doctor with alcohol abuse disorder. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from alcohol consumption. I have considered the following mitigating condition under AG ¶ 23:

(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; and

(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 an established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Applicant voluntarily entered an alcohol rehabilitation program. He disclosed in his response to his government interrogatories that he has not consumed alcohol since August 2016, after he completed the program. There is no evidence to support that alcohol continues to be a problem in his life. The DUI charge he received was nolle prossed and it has been eight years since the offense occurred. I have considered all the evidence and find that a sufficient period of time has elapsed since his DUI arrest and his last consumption of alcohol, and that future alcohol-related conduct is unlikely to recur. AG ¶¶ 23(a) and 23(b) apply.

Guideline J: Criminal Conduct

The security concern for criminal conduct is set out in AG ¶ 30:

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.

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 31, and the following are potentially applicable:

(a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and

(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 in 2010 for marijuana possession and in 2012 for DUI. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from criminal conduct. The following mitigating conditions under AG ¶ 32 are potentially applicable:

(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 possession of marijuana charge was nolle prossed after he completed probation and a drug rehabilitation program. Applicant told the government investigator that he has not been involved in drugs since then and has no intention to be involved with drugs in the future. He changed his life. The evidence supports that his past drug-related conduct is unlikely to recur.

Applicant was charged with DUI in 2012. This charge was also nolle prossed. Applicant acknowledged he was concerned about his alcohol consumption so he voluntarily enrolled in an alcohol rehabilitation program that he successfully completed and has abstained from alcohol consumption since August 2016. There is no evidence of additional misconduct. I believe future alcohol-related misconduct is unlikely to recur. 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 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. 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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

(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.

Applicant failed to disclose on his SCA that he had been charged with possession of marijuana and DUI in 2010 and 2012, respectively. He explained that he misread the question and believed it asked if he had been convicted of an offense involving drugs or alcohol. Applicant admitted all of the SOR allegations. I found his statement credible and do not believe he deliberately omitted or concealed this information. There is insufficient evidence to conclude Applicant deliberately failed to disclose this information. AG ¶ 16(a) does not apply. Applicant was arrested in 2010 for marijuana possession and in 2012 for a DUI. AG ¶ 16(c) applies to his criminal conduct.

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

(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; and

(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.

Applicant's drug and alcohol charges were addressed under the criminal conduct guideline. The same issues were cross-alleged under the personal conduct guideline. No additional facts were raised regarding Applicant's criminal conduct under the personal conduct guideline beyond the two charges. It has been 8 years since Applicant's DUI charge and 10 years since his marijuana possession charge. Both charges were nolle prossed. Applicant has voluntarily completed an alcohol rehabilitation program since then and there has been no additional misconduct. Sufficient time has passed, and Applicant has addressed his alcohol issues. It is unlikely additional problems associated with alcohol or drugs will recur, and his past conduct does not cast doubt on his reliability, trustworthiness and good judgment. The above mitigating conditions 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 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 E, F, G, and J in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant is 36 years old. He successfully mitigated the security concerns raised about his alcohol consumption, criminal conduct, and personal conduct. But he failed to meet his burden of persuasion regarding his financial issues. Although he is working with a law firm to resolve his debts, the evidence is insufficient to conclude he has resolved or paid any of his debts or has a payment plan for his large student loans that have been delinquent for years. He does not have a reliable financial track record, which raises questions about his reliability, good judgment, and trustworthiness. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns under Guideline E, personal conduct, Guideline G, alcohol consumption, and Guideline J, criminal conduct, but failed to mitigate the security concerns raised under 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 J:	FOR APPLICANT
Subparagraphs 1.a-1.b:	For Applicant
Paragraph 2: Guideline G:	FOR APPLICANT
Subparagraphs 2.a-2.b:	For Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraphs 3.a-3.b:	For Applicant
Paragraph 4, Guideline F:	AGAINST APPLICANT

Subparagraphs 4.a-4.cc: 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.

Carol G. Ricciardello
Administrative Judge