



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



In the matter of:)	
-----)	
)	ISCR Case No. 17-03497
)	
Applicant for Security Clearance)	

Appearances

For Government: Michelle Tilford, Esquire, Department Counsel
For Applicant: *Pro se*

03/18/202

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On January 9, 2018, the Department of Defense (DOD) Consolidated Adjudication Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations), Guideline E (Personal Conduct), and Guideline H (Drug Involvement). The action was taken under Executive Order 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 or after June 8, 2017. In a response notarized on February 2, 2018, Applicant admitted all allegations and requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. I was assigned the case on August 20, 2018.

On September 7, 2018, a notice setting the hearing for October 3, 2018, was issued. Due to an administrative conflict, an amended notice was issued on September 28, 2018, altering the time of the hearing on the same day as previously set. The hearing was convened as rescheduled. The Government offered eight exhibits (Exs.), noted as Exs. 1-8, and Applicant presented a package of materials, collectively

accepted as Ex. A without objection. With no objections, all exhibits were accepted into the record. Applicant also introduced one witness.

Applicant was granted through October 19, 2018, to submit any additional materials. The transcript of the proceeding (Tr.) was received on October 2, 2018. Eight documents from Applicant were forwarded to me on October 19, 2018, and accepted without objection as Exs. B-I. The record was then closed. Based on the testimony, materials, and record as a whole, I find Applicant mitigated security concerns.

Findings of Fact

Applicant is a 32-year-old cable technician who has performed the same type of work with the same entity since April 2016. Married in 2018, Applicant and his wife have a toddler and a preteen child. They bought their home in 2016.

Applicant completed high school and briefly attended some college. During high school, starting in about March 2003, Applicant began using marijuana infrequently as a “social thing.” (Tr. 87). He continued using the drug infrequently in college, where he played football and was subject to drug testing, but he never tested positive for an illegal drug. Subsequent drug use was intermittent. In January 2016, living in a new home with his new bride and a baby on the way, he was ready to face adult responsibilities. He decided to quit using marijuana on New Year’s Day. He has no interest in returning to drug use and he has signed a statement of intent not to again use drugs under penalty of loss of an clearance granted. (Ex. C) Since that time, he has been subject to drug testing, but never been flagged for drugs. He is committed to remaining marijuana-free.

Over the past dozen years, Applicant has experienced two periods of unemployment – a two-month period from late October 2014 to December 2014 and a five-month period from June 2009 to November 2009. He was also unemployed for about three months after leaving college in 2007. He has not had financial counseling.

Applicant failed to timely file federal and state tax returns for tax year (TY) 2007. At that time, he was 19, a dependent of his mother, a full-time student, and any “income” at issue was paid to Applicant by his mother. (Tr. 17-18) Consequently, he was not required to file tax returns for that year. (Tr. 18)

For TY 2012, based on “some bad advice,” Applicant failed to timely file his federal tax returns. (Tr. 19) At the time, he owed approximately \$1,847 for TY 2012. He had his tax returns for TY 2012 done on his behalf in June 2014, but the amount owed went unpaid. (Tr. 19) At the same time, his federal tax returns for TY 2013 were belatedly filed, but a balance of \$7,372 was not paid. (Tr. 20) They had not initially been filed on time because of “bad advice” he had received. (Tr. 20)

In 2017, Applicant used a professional tax preparer and had his TY 2014 federal tax returns filed. (Tr. 20) He made no payments toward taxes owed because he was given poor advice and because he was afraid he could not afford to satisfy the total

sums owed during a year in which he had endured a significant period of unemployment followed by a [period of reduced income. (Tr. 21) He had been advised that there was no urgency in filing late returns. (Tr. 23) Moreover, he had never set money aside for bonuses on which taxes had not been withheld. (Tr. 22) He had no savings account, preferring to put any saved money into his retirement account. He “didn’t have a complete understanding” of the tax process and what had to be filed by April 15. (Tr. 21) When the tax professional filled in missing tax returns, he told Applicant “late fees were waived, and things of that sort,” but failed to stress the urgency of paying the amounts due. (Tr. 23)

Today, all federal tax returns have been filed. Regarding TY 2015, Applicant belatedly filed for that year in October 2017, but the Internal Revenue Service (IRS) was unable to verify that it had been filed after a request for proof of filing was initiated in 2018. (Ex. D; Tr. 24) Due to an internal issue and past identity theft, the IRS is unable to identify Applicant, making him go through a multi-step verification process. (Ex. E) He is now in a repayment plan where he pays \$100 each month to satisfy any outstanding tax balance. (Ex. G) His overall tax balance is substantially reduced. (Tr. 29)

Applicant failed to timely file state tax returns and pay owed taxes for TY 2012 through 2016. In addition, tax liens were entered against Applicant in 2015 (\$3,474) and in 2017 (\$1,561). Again, Applicant had been given poor tax advice and an initial person helping him was less than thorough. Applicant has since filed state tax returns for TY 2012 through 2016. As per state rules dictating tax repayment, he is in a repayment plan under which he timely pays \$146.05 per month to satisfy his entire state tax balance, which was last noted as a balance of \$3,685.54.(see Ex. I; Applicant’s e-mail narrative of Oct. 17, 2018, at 2-3)

Also at issue are seven delinquent debts:

ADVERSE JUDGMENT - \$6,201 – DISPUTED - Dating from 2016, the delinquent debt is related to a rental property in which Applicant resided with his mother. Applicant has been unable to locate the creditor for his mother. He disputes the balance cited. (Tr. 54-56, 74)

US DEPT. OF EDUCATION COLLECTIONS - \$2,269/\$1,508/\$1,455 – IN REPAYMENT as of 2016 after completion of a rehabilitation program. His balance is notably reduced and he is in good standing under the repayment plan. (Ex. A; Ex. D; Tr. 57-61)

STATE COLLECTION - \$1,867 – UNRESOLVED – Applicant is looking in to setting up some form of repayment plan.

BANK COLLECTION - \$1,133 – IN REPAYMENT – This debt is now at \$500 or less through timely repayments. (Ex. A; Tr. 69-72)

GYM COLLECTION - \$115 – PAID on or before February 2017. (Ex. B)

In around October 2014, Applicant and other employees were terminated from a telecommunications entity for falsifying records. At the time, Applicant worked two overlapping shifts amounting to 232 hours during each two-week pay period. (Tr. 77-78, 80) On-call services were regularly performed before his usual regular shift began because he would often cover for other employees. For example, he might begin performing on-call services at 7 a.m. before starting his nine-hour 11 a.m. to 8 p.m. shift. (Tr. 77-78) In doing so, he would log in for work at 7 a.m., thus reflecting a longer than expected work day consisting of what could be viewed as two nine-hour shifts. (Tr. 78) In addition, he was to be available on-call 24-hours a day as needed. (Tr. 80) During those periods, he was the only employee receiving on-call assignments. (Tr. 81)

Although all the work Applicant reported as completed was performed, management claimed it tracked insufficient movement of his truck. This was an internal earmark for activity even though some calls could be monitored from the central office (e.g., problems related to power outages beyond his company's control) without an actual trip to the problem site. (Tr. 82-83) Applicant and other techs were put on administrative leave for such perceived deficiencies, during which time Applicant objected. Ultimately, they were terminated for falsification of documents. (Tr. 85) Despite this consequence, there was no written guidance advising against this practice or dictating another protocol. (Tr. 85) Indeed, there had been an agreement noting that employees could not be fired for anything related with the GPS system. (Tr. 86)

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. 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 variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that any 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.

Under Directive ¶ E3.1.14, the Government must 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. The Government reposes a high degree of trust and confidence in those granted access to classified information. Decisions necessarily include consideration of the possible risk an applicant may deliberately or inadvertently fail to safeguard such information. Decisions shall be in terms of the national interest and do not question the loyalty of an applicant.

Analysis

GUIDELINE F – Financial Considerations

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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.

Here, the Government offered documentary evidence reflecting that Applicant failed to timely file federal and state tax returns and pay taxes owed for multiple years. In addition, several delinquent debts were cited. This is sufficient to invoke financial considerations disqualifying conditions:

AG ¶ 19(a) inability to satisfy debts;

AG ¶ 19(b) unwillingness to satisfy debts regardless of the inability to do so;

AG ¶ 19(c) a history of not meeting financial obligations, and

AG ¶ 19(f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Four conditions could mitigate the finance related security concerns posed here:

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 person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit counseling service, and there are clear indications that the problem is being resolved or is under control; and

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

Although Applicant was not responsible for filing tax returns in 2007 due to his dependent status and youth, he failed to timely file federal tax returns and pay taxes owed for TYs 2012-2014; the status of his return for TY 2015 remains unresolved due to an identity theft issue the IRS is presently resolving. His failures were based on a combination of ignorance, inexperience, youth, and bad advice. Even when he retained assistance to straighten out his tax situation, he was not given appropriate advice. However, his TYs 2012-2014 returns were filed in 2017. Similar misunderstanding and poor handling led to his failure to file and pay state tax for TYs 2012-2016 and to address two liens. Those, too, have since been addressed, and the remaining debt owed is in timely repayment.

Aside from the poor tax advice received and the IRS difficulty in verifying Applicant's identity due to past identity theft, Applicant has faced other issues beyond his control. He has been noted as a debtor for an apartment rented by his mother and he experienced periods of unemployment and reduced salary that adversely affected his ability to meet his debts. Regardless, he is now in timely repayment on his student loans and satisfied a balance owed to a gym. He disputes the amount cited in his mother's apartment rental that is noted on his credit report, and he is working with his state to get a payment plan to resolve a remaining debt of about \$1,133. Because he has not received financial counseling, AG ¶ 20(c) does not apply. However, his active measures to address his debts and to bridge gaps in his federal and state tax returns from five or more years ago, I find AG ¶ 20(a), AG ¶ 20(b), and AG ¶ 20(d) apply.

GUIDELINE E – Personal Conduct

The security concern for personal conduct 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 or sensitive information.

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

AG ¶ 16(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 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. This includes, but is not limited to, consideration of: (1) untrustworthy or unreliable behavior . . . [and] (3) a pattern of dishonesty or rule violations. . . and

AG ¶ 16(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes: (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing. . . .

Moreover, I have considered these facts in light of the AG ¶ 17 mitigating conditions. I find the following applicable:

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

AG ¶ 17(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Here, Applicant's dismissal is not a minor incident. However, it occurred nearly six years ago. Further, the circumstances were unusual. It appears he was deemed untruthful for not physically traveling to each job site when on-call and, instead, first checking such things as electrical outages before proceeding off premises with the complaint. This does not appear to be a dishonest maneuver, but rather a measure of efficiency or misunderstanding. In addition, GPS tracking was not meant to be used against employees in this matter. Regardless, the situation was unusual and is not likely to recur in the future. Today, he is completely open and candid about the circumstances at issue. Consequently, I find AG ¶ 17(c) and AG ¶ 17(e) apply.

GUIDELINE H – Drug Involvement

Applicant admitted using marijuana, an illegal drug, with varying frequency from about March 2003 to January 2016, This is sufficient to raise the following disqualifying condition:

AG ¶ 25(a) any substance misuse.

Under Guideline H, conditions that could mitigate security concerns arising from drug involvement and substance misuse are enumerated. The following mitigating conditions apply to Applicant's case:

AG ¶ 26 (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;

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, 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 quit using marijuana in January 2016, over four years ago. He did so in his mid-20s, in the wake of his new found maturity, the birth of a child, and the responsibilities of home ownership. Since that time he has married his partner, maintained employment, and settled down. Applicant freely acknowledges and laments his past marijuana use. Now a family man, he has executed a signed statement of intent to abstain from future drug use acknowledging that any future involvement or misuse is grounds for automatic revocation of any national security eligibility granted. In light of life changes in recent years and his multiple years of abstinence, AG ¶ 26(a)-(b) apply.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of his conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d). Here, I have considered those factors. I am also mindful that, under AG ¶ 2(a), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

Applicant is a 32-year-old cable tech who has worked for the same company since April 2016. Applicant and his wife married in 2018. They bought their home in 2016. The couple has a toddler and a preteen child. Applicant completed high school.

Applicant was met with some challenges in his youth. His stay in college was brief. He became a father for the first time in his early 20s. He got involved with marijuana. He lost a job under valid, but curious circumstances. He left his mother's care with little or no financial or tax sense. Applicant relied on poor advice regarding the filing of federal and states taxes, and the need to timely pay the taxes owed. His early

attempts to rectify his situation were inadequate. Finally, by the time he decided to take control of his life and active maturely, he devoted himself to his family, quit marijuana, and sought professional help to address his tax situation.

Today, Applicant's past federal and state tax returns are filed and he is in timely repayment on his tax balances, with significant progress having been made to date. He has his student loans in timely repayment, paid one debt, disputed another debt, and is working on setting up a repayment plan on a modest balance of \$1,133. His strategy to address his financial issues is succeeding. Other than his past marijuana use – which he has quit and put behind him – and his dismissal from one job six years ago, there is no suggestion that Applicant today is anything but a responsible and maturing family man. In light of all the above, I find Applicant mitigated financial considerations, personal conduct, and drug involvement 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: Subparagraph 1.a-1.o:	FOR APPLICANT For Applicant
Paragraph 2, Guideline E: Subparagraph 2.a:	FOR APPLICANT For Applicant
Paragraph 3, Guideline F: Subparagraph 3.a:	FOR APPLICANT For Applicant

Conclusion

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

Arthur E. Marshall, Jr.
Administrative Judge