



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

)
)
)
)
)
)

ISCR Case No. 20-00573

Appearances

For Government: Andrew H. Henderson, Esquire, Department Counsel

For Applicant: *Pro se*

March 31, 2021

Decision

ROSS, Wilford H., Administrative Judge:

On September 6, 2018, Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP). (Item 2.) On May 28, 2020, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines H (Drug Involvement and Substance Misuse), and F (Financial Considerations). The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on June 8, 2017.

Applicant answered the SOR in writing (Answer) on June 16, 2020, with explanations and allied documents (Attachments 1 through 6), and requested his case be decided on the written record in lieu of a hearing. (Item 1.) In his Answer he admitted all the allegations in the SOR, with the exception of 2.k, which he denied. On November

23, 2020, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM), consisting of Items 1 to 5, was provided to Applicant, who received the file on January 13, 2021.

Department Counsel submitted five items in support of the SOR allegations. Item 3 is inadmissible. It will not be considered or cited as evidence against Applicant's interests in this case. It is the summary of unsworn interviews of Applicant conducted by an interviewer from the Office of Personnel Management on November 11, 2018, and January 10, 2019. Applicant did not adopt them as his own statements, or otherwise certify them to be accurate. Under Directive ¶ E3.1.20, this Report of Investigation summary is inadmissible against Applicant's interests in the absence of an authenticating witness. See Executive Order 10865 § 5. In light of Applicant's admissions, Item 3 is also cumulative. Applicant is not legally trained and may not have understood the import of Section V. "Notice to Applicant" in "Department Counsel's File of Relevant Material (FORM)." I therefor reviewed Item 3 for any potentially mitigating information that Applicant might have thought would be considered. No mitigating information was found in Item 3 that was not available from other sources in the record, and which was accordingly considered.

Applicant was given 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant elected not to submit any additional information. The case was assigned to me on March 16, 2021. Based upon a review of the pleadings and exhibits, national security eligibility for access to classified information is denied.

Findings of Fact

Applicant is 58 and single. He has a bachelor's and a master's degrees. He is attempting to obtain national security eligibility in connection with his employment in the defense industry. (Item 3 at Sections 12, 13A, and 25.)

Paragraph 1 (Guideline H – Drug Involvement and Substance Misuse)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has used illegal drugs. Applicant admitted both allegations under this paragraph.

1.a and 1.b. Applicant used marijuana from February 2017 through at least January 2019. He used marijuana after completing his e-QIP on September 8, 2018, to obtain a security clearance with the Department of Defense. (Answer; Item 2 at Section 23.)

Applicant stated in his e-QIP that he had a medical condition that left him in chronic pain. Eventually he had been prescribed Oxycodone. He stated, "The opiates

bothered my stomach so based on my Dr.s comments I tried medical marijuana for the pain as a way to get off opiates.” He further stated, “While it seems to help in reducing flair ups, I really want to work in the position I have been offered and respect the Federal Governments position on Medical Marijuana. I will seek the advice on alternatives from my Dr. and the local pain management clinic.” (Item 2 at Section 23.)

Applicant submitted a copy of his state medical marijuana card. It is noted that the card was issued on February 16, 2017, and expired on February 15, 2018. There is no evidence that Applicant had a valid card at the time he filled out the e-QIP, or admitted to last using marijuana, both of which events were in 2019. (Item 2 at Section 23; Answer, Attachment 6.)

Paragraph 2 (Guideline F - Financial Considerations)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds.

The SOR alleged that Applicant had one delinquent tax debt and fourteen past-due or charged-off commercial debts, totaling approximately \$58,000. Support for the existence and amount of the indebtedness is found in credit reports of the Government dated October 9, 2018; and November 19, 2020. (Items 4 and 5.)

Applicant stated on his e-QIP that his debt problems occurred due to a loss of income. He further stated, “I have not had sufficient income to settle these debts yet but I have settled others.” (Item 2 at Section 26.)

The current status of the allegations in the SOR is as follows:

2.a. Applicant admitted owing the Federal Government for delinquent taxes for tax year 2006 in the amount of approximately \$45,000. Applicant stated in his Answer that he has reduced the indebtedness to \$15,786. He stated in his Answer, “When I started out as a contractor I found work only intermittently. I was not good at budgeting for months out of work, keeping working capital, and saving for taxes. I learned to budget for those things.” This debt is not resolved.

2.b. Applicant admitted owing a creditor \$2,677 for a collection account. He has not made any payments on this account and it remains due and owing. It is not resolved.

2.c. Applicant admitted owing a creditor \$1,582 for a past-due debt that has been charged off. He stated in his Answer, “This debt is not on my credit report. I honestly don’t remember if I paid it. I could not find a receipt.” While this debt is found in the 2019 credit report (Government Exhibit 4), it is not found in the 2020 report (Government

Exhibit 5). Based on the state of the record, I find the Government has not proved this is a current debt of the Applicant.

2.d. Applicant admitted owing a creditor for a charged-off debt in the amount of \$1,123. Applicant made payment arrangements with the creditor's agent and paid the agreed amount in May 2019. This debt has been resolved. (Answer, Attachment 5.)

2.e. Applicant admitted owing a creditor \$995 for a charged-off debt. Applicant stated in his Answer that he had paid this debt off. None of his attachments support this statement. This debt is not resolved.

2.f. Applicant admitted owing a creditor \$788 for a past-due debt placed in collection. He has not made any payments on this account and it remains due and owing. It is not resolved.

2.g. Applicant admitted owing a creditor \$780 for a past-due debt placed in collection. He has not made any payments on this account and it remains due and owing. It is not resolved.

2.h. Applicant admitted owing a creditor for a past-due debt in the amount of \$662. Applicant made payment arrangements with the creditor's agent in May 2019, as shown by a settlement agreement. The Applicant did not provide a receipt showing that he had paid this debt. This debt is not resolved. (Answer, Attachment 2.)

2.i. Applicant admitted owing a creditor for a past-due debt in the amount of \$618. He has not made any payments on this account, and it remains due and owing. It is not resolved.

2.j. Applicant admitted owing a past-due debt in the amount of \$547. He has not made any payments on this account, and it remains due and owing. It is not resolved.

2.k. Applicant denied owing a past-due debt in the amount of \$122. He stated in his Answer that he paid the debt and, "This does not show up when I look at my report currently." Neither of the credit reports in the record shows a past-due debt to this creditor in this amount. This allegation is found for Applicant due to a lack of evidence.

2.l. Applicant admitted owing a creditor for a past-due debt in the amount of \$176. Applicant made payment arrangements with the creditor's agent and paid the agreed amount in April 2019. This debt has been resolved. (Answer, Attachment 1.)

2.m. Applicant admitted owing a creditor for a past-due debt in the amount of \$1,187. Applicant made payment arrangements with the creditor's agent and paid the agreed amount in March 2019. This debt has been resolved. (Answer, Attachment 4.)

2.n. Applicant admitted owing a creditor for a past-due debt in the amount of \$981. He stated in his Answer that he had paid this debt. None of the attachments to the Answer support his statement. This debt is not resolved.

2.o. Applicant admitted owing a creditor for a past-due debt in the amount of \$883. Applicant made payment arrangements with the creditor's agent and paid the agreed amount in April 2019. This debt has been resolved. (Answer, Attachment 3.)

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 useful 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, the administrative judge applies 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(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, "Any doubt concerning personnel being considered for national security eligibility 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 contained in the record.

According to 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 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.

Finally, as emphasized in Section 7 of EO 10865, “Any determination under this order adverse to an applicant shall be a determination 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

Paragraph 1 (Guideline H – Drug Involvement and Substance Misuse)

The security concern relating to Drug Involvement and Substance Misuse is set forth in AG ¶ 24:

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.

I have examined the disqualifying conditions under AG ¶ 25 and especially considered the following:

- (a) any substance misuse (see above definition); and

- (g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

Applicant has a history of using illegal drugs. This occurred between 2017 and at least January 2019. Applicant knew of the Government’s concern over his drug use and continued his use anyway. There was no statement in his Answer that he would discontinue drug use. Both of the stated disqualifying conditions apply.

The following mitigating conditions under AG ¶ 26 have also been considered:

(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; and

(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.

There is no evidence in the record that Applicant has stopped using illegal drugs, with his admitted last use being as recent as two years ago. The medical marijuana card he submitted with his Answer is out of date, and was out of date the last time he admitted using marijuana in January 2019. Neither of the mitigating conditions apply. Paragraph 1 is found against Applicant.

Paragraph 2 (Guideline F, Financial Considerations)

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

AG ¶ 19 describes three conditions that could raise security concerns and may be disqualifying in this case:

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

Applicant owed approximately \$58,000 for delinquent tax debts, as well as past-due and charged-off consumer debts, as of the date the SOR was issued. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged financial difficulties:

- (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, or a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (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.

None of the mitigating conditions fully apply to this case. Applicant has paid off a substantial amount of his debt. However, he still owes approximately \$15,000 in delinquent taxes and \$8,000 in past-due consumer debt. Applicant has had periods of unemployment over the past few years, but he submitted no evidence to show that he was acting responsibly to pay his debts during subsequent periods of employment. He did not submit any records showing that he has made any payments on the debts since 2019. There is no evidence that he is making a current, good-faith effort to pay them. It

is simply too soon to find that Applicant is financially stable. Paragraph 2 is found against Applicant.

Applicant did not submit any evidence concerning the quality of his job performance. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

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 national security eligibility and 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. Applicant has a history of drug use that was not mitigated. In addition, he is substantially indebted. Insufficient time has passed, since the last time he admitted to using drugs, to demonstrate rehabilitation or reduce the likelihood of recurrence. Overall, the record evidence as described above leaves me with questions and substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under the guidelines for Drug Involvement and Substance Misuse, and Financial Conditions.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraphs 2.a and 2.b:	Against Applicant
Subparagraphs 2.c and 2.d:	For Applicant
Subparagraphs 2.e through 2.j:	Against Applicant
Subparagraphs 2.k through 2.m:	For Applicant
Subparagraph 2.n:	Against Applicant
Subparagraph 2.o:	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 national security eligibility and a security clearance. Eligibility for access to classified information is denied.

WILFORD H. ROSS
Administrative Judge