



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



In the matter of:)	
)	
)	ISCR Case No. 19-03295
)	
Applicant for Security Clearance)	

Appearances

For Government: Aubrey M. DeAngelis, Esq., Department Counsel
For Applicant: *Pro se*

12/14/2021

Decision

Curry, Marc E., Administrative Judge:

Applicant’s marijuana use was infrequent, and more than three years have elapsed since his last use. Applicant’s property tax delinquency, his most significant debt, was resolved when he sold his home in 2020. The remaining delinquencies are nominal. I conclude Applicant has mitigated the security concerns. Clearance is granted.

Statement of the Case

On April 13, 2020, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline H, drug involvement and substance misuse, and Guideline F, financial considerations, explaining why it was unable to find it clearly consistent with the national security to grant security clearance eligibility. The DOD CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the National Adjudicative Guidelines (AG) effective for any adjudication made on or after June 8, 2017. On January 14, 2021, Applicant answered the SOR, admitting all of the allegations except subparagraph 2.f. He requested a decision without a hearing. On May 24, 2021,

Department Counsel prepared a File of Relevant Material (FORM) setting forth the Government's argument in support of the SOR, together with supporting documentation. Applicant received a copy of the FORM on June 9, 2021, and was instructed to file any objections to this information, or to supplement the file within 30 days of receipt. Applicant did not do so, whereupon the case was assigned to me on July 20, 2021.

Findings of Fact

Applicant is a 40-year-old man with one child, age 9. Applicant was married twice previously. Both marriages ended in divorce. (Item 1 at 17-19) He earned a high school diploma in 2000, and he earned an associate's degree in 2005. (Item 1 at 12-13) He has been working for a defense contractor as a technical product designer since 2005. (Item 1 at 13) He has never held a security clearance. (Item 1 at 31)

Applicant used marijuana, on average, once every other year from approximately 1998 to 2018. (Item 5 at 3) He typically used it at concerts with friends or at the homes of acquaintances. (Item 4 at 29-30; Item 5) He has not used marijuana since May 2018. (Items 3-4) In November 2019, he executed a statement of intent to not use marijuana again. (Item 5 at 15)

The SOR alleges six debts totaling approximately \$11,000. Applicant incurred them between 2012 and 2015. (Items 4-10)

The debt alleged in subparagraph 2.a is a delinquent phone bill for \$337. (Item 3 at 3) It stems from a cell phone call that his former stepdaughter made when she lived with him. Applicant initially disputed the bill, contending that the phone company errantly charged a long-distance rate for the phone call, bypassing a local cell phone tower in violation of Federal Communications Commission regulations. (Item 5 at 3) By the date of Applicant's answer in January 2021, he had concluded that it was less expensive to pay this bill than to contest it in court. (Item 3 at 3) He provided no evidence that he has either paid this bill or arranged a payment plan.

Subparagraph 2.b, totaling \$170, is a delinquent medical bill. (Item 3 at 3) Applicant contends that the health care provider overcharged him, and that he met his deductible. (Item 3 at 3) He referenced an explanation of benefits form substantiating his contention, but did not submit the form into the record.

Subparagraph 2.c, totaling \$82, is owed to a collection agent. In Applicant's answer, he stated that he would pay this bill within a month. (Item 1 at 2) He provided no proof of payment.

Applicant incurred the bill alleged in subparagraph 2.d, totaling \$232, when his then wife took their daughter to the emergency room. While the hospital was checking her daughter into their system, Applicant's then wife called him for their insurance information. He told her that the emergency room was an out-of-network health provider, and to take their daughter to a nearby hospital that was in-network. Applicant's then wife obliged,

leaving before their daughter had received treatment or finished checking in. (Item 3 at 3) Applicant received a \$232 bill from the out-of-network hospital even though his daughter had not received treatment or finished checking in. His insurance carrier would not provide partial reimbursement because his daughter had not received service. The hospital that billed him refused to negotiate a resolution. (Item 3 at 3) The bill remains outstanding. Applicant provided no documentation of any attempts to satisfy or resolve this bill.

Subparagraph 2.e, totaling \$129, is a utility disconnect fee Applicant incurred after his home was destroyed by a fire in approximately 2016. (Item 3 at 4) Applicant contends that he should not have been charged this fee because no disconnect services were provided, as the electric meter melted during the fire. (Item 3 at 4) Applicant provided no record of any attempts to satisfy or resolve this debt.

Subparagraph 2.f, totaling \$10,013, is a property tax delinquency for the property that Applicant owned before he purchased his current home. (Item 1 at 2) This debt was satisfied after the property was sold at auction. (Item 3 at 5-8) It is unclear from the record whether this was the house that was destroyed by the fire in 2016.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant’s eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(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 ¶ 1(d) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

- (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.

Analysis

Guideline H: Drug Involvement and Substance Misuse

Under this guideline, "the illegal use of controlled substances . . . can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations." (AG ¶ 24) Applicant's use of marijuana, spanning 20 years, triggers the application of AG ¶ 25(a) "any substance misuse." Although Applicant's marijuana use spanned 20 years, it was infrequent, as he only used it approximately ten times during that period. Applicant has not used marijuana in nearly three and a half years, and he executed a statement in 2019, declaring his intent to not to use any marijuana in the future. Under these circumstances, 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," and AG ¶ 26(b)(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," apply. Applicant has acknowledged his drug involvement and is willing to abstain from marijuana in the future. I conclude Applicant mitigated the drug involvement security concern.

Guideline F: Financial Considerations

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

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 An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant’s history of delinquent debts generates security concerns under AG ¶ 19(a), “inability to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.” The delinquent property tax, which constituted 90 percent of Applicant’s delinquent debt, was satisfied when Applicant sold the property in January 2020.

One of the remaining five debts, the debt alleged in subparagraph 2.a, was a phone bill that the service provider may have calculated improperly. The debt in subparagraph 2.b is a possible medical bill overcharge, and the debts in subparagraphs 2.d and 2.e were for services that Applicant contends were never provided. Conversely, Applicant provided no evidence substantiating the basis of the disputes or any steps to resolve them. Consequently, AG ¶ 20(e), the relevant mitigating condition (“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”), does not apply.

Given the nominal amount of the remaining debts, I conclude that they are not significant enough to generate concerns about Applicant’s overall financial stability, trustworthiness, or judgment. I conclude that Applicant has mitigated the financial considerations security concerns.

Whole-Person Concept

I considered the whole-person concept factors when I evaluated the disqualifying and mitigating conditions under Guidelines H and F, and they warrant a favorable conclusion.

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 H:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraphs 2.a – 2.e:	For Applicant

Conclusion

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

Marc E. Curry
Administrative Judge