



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



In the matter of:)
)
) ISCR Case No. 20-01886
)
Applicant for Security Clearance)

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: Todd A. Hull, Esq.
02/02/2022

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny his eligibility for a security clearance to work in the defense industry. Applicant has resolved the delinquent accounts alleged in the Statement of Reasons and filed his outstanding income tax returns. He has rehabilitated his poor financial habits. He has also demonstrated a sufficient period of abstinence from marijuana use and his statement of intent to abstain from use in the future is credible. Clearance is granted.

Statement of the Case

On January 4, 2020, the DOD issued an SOR detailing security concerns under the financial considerations and drug involvement and substance misuse guidelines. This action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive), and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on June 8, 2017.

DOD adjudicators were unable to find that it is clearly consistent with the national interest to continue Applicant’s security clearance and recommended that the case be submitted to a Defense Office of Hearings and Appeals (DOHA) administrative judge for

a determination whether to revoke his security clearance. Applicant timely answered the SOR and requested hearing.

At the hearing, convened on August 4, 2021, I appended to the record, the Case Management Order (CMO) issued in this case on August 3, 2021, and the Government's disclosure letter, dated March 12, 2021, as Hearing Exhibits (HE) I and II, respectively. I admitted Government's Exhibits (GE) 1 and 5, and Applicant's Exhibits (AE) A through L, without objection. After the hearing, Applicant timely submitted the following documents, which are also admitted without objection from Department Counsel (See HE III, email correspondence indicating no objection to post-hearing submissions):

AE M: Marijuana Awareness Course Certificate of Completion, dated December 12, 2018 (1 page);

AE N: Capital One Payment Confirmation (Acct no. 0829), dated September 2, 2021;

AE O: Capital One Settlement Receipt (Acct no. 0829), dated September 16, 2021;

AE P: Capital One Payment Confirmation (Acct No. 1154), dated September 2, 2021; and,

AE Q: Capital One Settlement Receipt (Acct no. 1154), dated September 16, 2021.

DOHA received the transcript on September 3, 2021.

Procedural Matters

Department Counsel moved to withdraw SOR ¶ 2.b. Without objection from Applicant, the motion was granted. (Tr. 9)

Findings of Fact

Applicant, 40, has worked for his current employer, a federal contracting company, as an avionics technician since May 2019. He is required to maintain a license with the Federal Aviation Administration to work in his chosen field. Although he was granted access to classified information during his military service between June 1999 and June 2004, his previous employment did not require access. Applicant completed his most recent security clearance application in May 2019, in which he disclosed a 2018 job termination after testing positive for marijuana during a random urinalysis, and that he had used marijuana from November 2004 to November 2018. He also disclosed his failure to timely file his federal income taxes in 2017, and that he had seven delinquent accounts. (Tr. 20; GE 1; AE C)

Financial Concerns

Applicant admits to living beyond his means in the past, using credit cards and a personal loan to fund his lifestyle. Between 2015 and 2018, he admits to incurring \$5,880 in delinquent debt. (SOR ¶¶ 1.a – 1.c) He also admitted to failing to file his federal and state income tax returns in 2017 (SOR ¶ 1.c – 1.d). In 2019, Applicant withdrew funds from his retirement accounts to address his delinquent accounts, except for the charged-off accounts on his credit report. He realized that the charged-off accounts remained a concern to the Government when he received the SOR. (Tr. 22, 25-26, 29, 58, 61-62; GE 2-5)

Applicant owes the same creditor for the accounts alleged in SOR ¶¶ 1.a and 1.b. The creditor agreed to settle both accounts for less than the amounts owed and also agreed to allow Applicant to pay the settlement amount through installment plans. According to receipts from the creditor, he satisfied the terms of the installment agreements in September 2021. (AE E-F, N-Q) Applicant resolved the account alleged in SOR ¶1.c, a personal loan, in January 2021. (Tr. 22-24; 26-30; Answer; AE G)

Applicant blamed his failure to timely file his 2017 federal and state income tax returns on his concern that he would owe an additional tax liability that he could not afford. Although he timely filed for an extension of the filing deadline, he did not file the returns as required. He filed the federal income tax return in April 2020 and did not owe any additional taxes. He filed the state income tax return in January 2021 and owed \$363.00, which he paid upon filing the return. Since 2017, he has timely filed federal and state income returns. There is no evidence of any current outstanding federal or state tax liabilities. (Tr. 30-35, 62-63, 72-73; GE 2; AE H-I)

Applicant has reformed his financial habits. Between April and July of 2019, he worked with a credit repair company. He separated from his wife of 12 years in 2015. She left the marital home in 2018. Applicant has primary physical custody and sole financial responsibility for his two minor children. He does not receive any child support from his estranged wife. He uses a budget and has established a system that makes it more difficult for him to spend money impulsively. He currently earns approximately \$87,000 annually and lives within his means. (Tr. 24, 59, 63-66)

Drug Use

Under the substance abuse and misuse guideline, the SOR alleges that Applicant used marijuana with varying frequency from November 2004 to November 2018 (SOR ¶ 2.a), and that Applicant was terminated from a job in 2018 after he tested positive for marijuana use (SOR ¶ 2.c). He admits both allegations. (Answer; GE 2)

Applicant began using marijuana after his discharge from military service in 2004. Initially, he used the drug recreationally with his friends. Between 2004 and 2010, he used the drug approximately six times per year. He decreased his use of marijuana in 2010 after learning that he and his wife were expecting their first child. In 2012, he began working with a company that had a zero tolerance drug policy. He was also

aware that any illegal drug use jeopardized his FAA license. He would use the drug during periods when he was away from work, using no later than 72 hours before he was scheduled to return to work. He believed that by employing this strategy, he would not report for work under the influence of the drug; however, he was aware that he would test positive for the substance. Between 2010 and 2018, Applicant used marijuana three to four times per year. (Tr. 35, 47, 50-53, 56, 68)

Applicant began to use marijuana to self-medicate difficult emotions between 2015 and 2018, when he and his wife separated but continued to cohabitate. In 2016, he was arrested for driving under the influence of alcohol. As a result, he attended six weeks of court-ordered counseling. On his own, he continued individual counseling for another year until November 2018. (Tr. 48, 53-55, 70-71)

In November 2018, a random urinalysis showed Applicant tested positive for marijuana use. He was terminated from his job. As part of his termination package, his employer provided him with the steps he needed to take to prevent losing his FAA license. He completed a marijuana awareness course in December 2018 and his license remains in good standing. (Tr. 36, 38, 40, 66-69, 71, 73)

Applicant has not used marijuana since November 2018. He vows never to use the drug again and has signed a statement of intent to that effect. In June 2021, Applicant submitted to a psychological screening by a licensed psychologist. After interviewing Applicant and administering a series of tests, the psychologist concluded that Applicant does not have a current substance abuse problem. (Tr. 37 -38, 40)

In terms of his ability to handle and protect classified information, the psychologist opined:

In general, he follows rules and law, but has had a few lapses of judgment in the past, relatively minor instances of problematic behaviors. This is not indicative of a pattern of behavior, as there are no signs of an underlying anti-authority attitude or an attempt to subvert rules. He has had a lackadaisical attitude towards rules in the past, but has learned to be more conscientious and is at low risk to repeat these mistakes. . . .

[Applicant] does not have any emotional, mental, or behavioral (alcohol use) problem at this time that would impair his judgment or behavior. His previous alcohol and marijuana use did not affect his work or relationships. In the context of his entire life, these were circumscribed, isolated incidents. He has learned from these experiences, and is honest, completes with the rules, has good judgment, and as a good ability to control impulses and protect classified information. (AE J)

Applicant is performing well at his current job, his performance meeting the expectations of his employers. Applicant testified remorsefully about his history of marijuana use and acknowledges that it is incompatible with his current responsibilities and lifestyle. He also acknowledges that any future marijuana use would not only mean

the inability to obtain or maintain a security clearance in the future, but that future marijuana use would cause the loss of his professional license, making him unemployable in his field. He has made lifestyle changes to support sobriety and has drawn a boundary with his friends prohibiting marijuana use in his presence. He has developed better coping strategies for stress and difficult emotions. (Tr. 37, 39-40, 42-45, 49, 67, 75-79; AE C)

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 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 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.

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 the applicant or proven by Department Counsel." The applicant 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 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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

The SOR alleges disqualifying conduct under the financial considerations and the drug involvement and substance abuse guidelines. Applicant’s admissions to the alleged conduct as well as the documents in the record support the Government’s *prima facie* case under both guidelines.

Guideline F, Financial Considerations

Failure to meet one’s 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. (AG ¶ 18). Applicant admits to living beyond his means in the past and using credit irresponsibly, which led him to incur delinquent debt as alleged in SOR ¶¶ 1.a through 1.c, totaling \$5,880. He also admits his failure to time file his 2017 federal and state income tax returns (SOR ¶¶ 1.d – 1.e). The record supports the application of the following financial considerations disqualifying:

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.

The record also supports the application of the following mitigating conditions:

AG ¶ 20(a) the behavior happened so long ago, was 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(c) the individual has received or is receiving financial counseling for the problem 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 under control;

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

AG ¶ 20(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.

Before the issuance of the SOR, Applicant took steps to address his financial problems. In 2019, he withdrew money from his retirement accounts to address delinquent accounts not alleged in the SOR. He also engaged a credit repair service to help him rehabilitate his credit history. He has resolved all of the alleged delinquent accounts, filed his outstanding 2017 federal and state income tax returns, and he has paid his past-due taxes.

The concern in this case is not based on the amount of the alleged outstanding debt, approximately \$5,880. The concern lies in the habits and practices that caused Applicant to accumulate delinquent debt and how they may impact his ability to handle and protect classified information. Applicant has acknowledged his irresponsible habits and has taken steps to rehabilitate himself. However, he now serves as the only means of financial support for his two children, a situation that Applicant takes seriously. Given this change in financial responsibility, it is unlikely that Applicant will engage in the financial habits of the past. The financial considerations concerns are mitigated.

Drug Involvement and Substance Misuse

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. The SOR alleges that Applicant and he admits that he used marijuana, with varying frequency between November 2004 and November 2018, and that he was terminated from employment in November 2018 after testing positive for marijuana on a random urinalysis test. Based on the record, the following disqualifying conditions apply:

AG ¶ 25(a) any substance misuse; and

AG ¶ 25(b) testing positive for an illegal drug.

Applicant presented sufficient information to merit the application of the following mitigating conditions:

AG ¶ 26(a) the behavior happened so long ago, was 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 ¶ 26(b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of action taken to overcome this problems, and has established a pattern of abstinence, including but not limited to:

- (1) Dissociation 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 from revocation of national security eligibility.

Applicant spoke candidly about his history of marijuana use and the negative impact it had on his life. He has abstained from illegal drug use since November 2018 and has provided a signed statement of intent to abstain in the future. Although he has friends who continue to use the drug, he has established a bright-line boundary about not using in his presence. In addition to the loss of employment in 2018, Applicant understands the consequences of any future drug use. Given his circumstances, it is unlikely that Applicant will use marijuana in the future. This conclusion is also supported by the finding of a June 2021 psychological assessment, which noted, in pertinent part, that Applicant does not have a substance use disorder, that he learned from his past experiences, and that he is fit to handle and safeguard classified information.

Based on the record, I have no doubts regarding about Applicant’s suitability for access to classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(d). He has sufficiently demonstrated that he has rehabilitated and reformed the behaviors that gave rise to the concerns alleged in the SOR. Although marijuana use violates federal law, there is no indication that Applicant has an underlying problem with rules or authority. As a result of the negative consequences of any future illegal drug use and poor financial habits, Applicant is unlikely to engage in similar behavior in the future.

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, Financial Considerations:	FOR APPLICANT
Subparagraphs 1.a – 1.e:	For Applicant
Paragraph 2, Drug Involvement and Substance Misuse:	FOR APPLICANT
Subparagraphs 2.a and 2.c:	For Applicant
Subparagraph 2.b:	Withdrawn

Conclusion

In light of all of the circumstances presented, it is clearly consistent with the national interest to grant Applicant a security clearance. Applicant's eligibility for access to classified information is granted.

Nichole L. Noel
Administrative Judge