



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



In the matter of:)	
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-----)	ISCR Case No. 20-03659
)	
)	
Applicant for Security Clearance)	

Appearances

For Government:
Jeff Nagel, Esquire, Department Counsel

For Applicant:
Pro se

March 18, 2022

Decision

ROSS, Wilford H., Administrative Judge:

Statement of the Case

Applicant submitted his most recent Electronic Questionnaires for Investigations Processing (e-QIP) on March 18, 2020. (Government Exhibit 2.) On April 13, 2021, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct). The action was taken under Executive Order 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 effective within the Department of Defense after June 8, 2017.

Applicant answered the SOR in writing (Answer) on July 6, 2021, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on September 14, 2021. The case was assigned to me on September 21, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on September 23, 2021. The case was heard on October 26, 2021. DOHA received the transcript of the hearing on November 8, 2021.

The Government offered Government Exhibits 1 through 4, which were admitted without objection. Applicant testified on his own behalf. He asked that the record remain open for the receipt of additional documentation. Applicant timely submitted Applicant Exhibits A through H, which were also admitted without objection, and the record closed on November 11, 2021.

Findings of Fact

Applicant is 36 years old and single. He has bachelor's degree. Applicant has been employed by a defense contractor since 2008 and seeks to retain national security eligibility and a security clearance in connection with his employment. (Government Exhibit 2 at Sections 12, 13A, and 17.)

Paragraph 1 (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. Applicant admitted the sole allegation under this guideline.

The SOR alleged that Applicant had one charged-off student loan debt in the amount of \$95,606. The existence and amount of this debt is supported by credit reports dated May 1, 2020; and September 14, 2021. (Government Exhibits 3 and 4.)

The student loan debt in this case was incurred in 2009 by Applicant's younger sister. The loan was co-signed by the Applicant, making him a joint debtor. There was some evidence that Applicant did not understand the ramifications of his co-signing for his sister's loan. The sister stopped paying on her student loans at some point after graduation due to her inability to make payments given her salary. Applicant was notified by the creditor of this default, but he did nothing to cure it since they were his sister's loans. Applicant stated he had no intention of paying this debt, even though he was the co-signer. He and his sister would occasionally talk about the situation. Applicant testified that he and his sister had last talked about the loans about two years before the hearing. (Tr. 24-32, 36-37.)

Applicant's sister submitted a statement after the hearing. In this statement she sets forth her educational background concerning the student loan. She stated in conclusion, "Currently, I am saving money for a settlement agreement with the collection agencies. I'm working towards saving \$30-70k and plan to have 50% of my student debts settled in the next two years." (Applicant Exhibit B.)

With the exception of his sister's unpaid student loan, Applicant's financial situation is stable. He paid off his own student loans and has no other delinquencies. (Tr. 21, 23-24; Government Exhibits 3 and 4.)

Paragraph 2 (Guideline E, Personal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has engaged in conduct that involves questionable judgment, lack of candor, and dishonesty. Applicant admitted both allegations under this paragraph.

2.a. Applicant used marijuana between approximately January 2013 and October 2017. During that four-year period, he used marijuana about twice a week. Applicant held a security clearance during the time he was using marijuana. Applicant testified that he used marijuana as a way to relieve back pain. Applicant stopped using marijuana in 2017 because he knew its continued use was not compatible with his career. He evinced a credible intent not to use marijuana in the future. (Tr. 32-33, 37-39; Government Exhibit 2 at Section 23.)

2.b. Applicant originally denied using illegal drugs in an e-QIP dated May 7, 2015. (Government Exhibit 1 at Section 23.) He admitted his drug use on a subsequent e-QIP, dated March 18, 2020. (Government Exhibit 2 at Section 23.)

Applicant admitted that his falsification in 2015 was knowing and willful. By 2020 Applicant had stopped using marijuana and matured. With regard to possibly falsifying his second questionnaire Applicant testified, "[I]t didn't make sense to me why I did it the first time. So the second time I thought to myself, well, why would I do that again." (Tr. 33-35.)

Mitigation

Applicant presented documentary evidence supporting the fact that he is using his education to help others. In addition, he received an award from his company for excellent work. Finally, he submitted a university transcript showing that he is close to achieving a master's degree. (Applicant Exhibits E, F, G, and H.)

Applicant provided a letter from a close personal friend. The friend has known Applicant for over 20 years and believes him to be a man of character. The witness also

stated that Applicant is “thoughtful, thorough, and conscientious while carrying out tasks.” (Applicant Exhibit C.)

Applicant also submitted a letter from his rabbi, who has known Applicant since 2018. He stated, “I can attest that [Applicant] is a man of integrity and honesty, and is deeply committed to improving his already sterling character traits.” (Applicant Exhibit D.)

Policies

When evaluating an applicant’s suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, “Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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 national security eligibility. 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 or sensitive information. Finally, as emphasized in Section 7 of Executive Order 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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Paragraph 1 (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 two conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts; and

- (c) a history of not meeting financial obligations.

Applicant co-signed for his sister’s student loans. She defaulted on them and the creditor looked to Applicant for resolution. No payments have been made on these debts. Neither Applicant or his sister have any current plans to pay or otherwise resolve this debt. These facts establish *prima facie* support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes three 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.

Under the law, by co-signing his sister's student loan note Applicant became as responsible for any future delinquency as she was. There is some evidence that Applicant did not completely understand the implications of that fact at the time, but it was certainly made clear to him when he was issued the SOR in April 2021. He had knowledge of the debt beforehand, and testified that he had been trying to get his sister to remove him from the debt. Their last conversation was two years before the hearing, though they have obviously communicated after the hearing. No evidence was submitted that Applicant or his sister have any current intention of paying or otherwise resolving this debt. The most Applicant's sister would say is that she hopes to possibly resolve some of the student loan debt within two years. Looking particularly at AG ¶ 20(b), Applicant has not shown that he has acted responsibly after learning of his responsibility for this debt. None of the mitigating conditions are applicable to the Applicant's situation. Paragraph 1 is found against Applicant.

Paragraph 2 (Guideline E, Personal Conduct)

The security concerns relating to the guideline for personal conduct are set out in AG ¶ 15, which states:

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. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes three conditions that could raise security concerns and may be disqualifying in this case:

(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 national security eligibility or trustworthiness, or award fiduciary responsibilities;

(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; and

(e) personal conduct or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, 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.

Applicant used marijuana from 2013 to 2017. During that time, he was employed by a defense contractor and held a security clearance. He did not report these facts on his e-QIP in 2015. The above disqualifying conditions have application to this case.

The guideline includes three conditions in AG ¶ 17 that could mitigate the security concerns arising from Applicant's marijuana use and related falsification:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(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.

Turning first to Applicant's drug use. He stopped using marijuana in 2017, about four years before the record closed. There is no evidence of further drug use and Applicant evinced a credible intent not to use marijuana or other illegal drugs in the future. Applicant has successfully mitigated the security significance of his drug use.

Applicant has also mitigated the significance of his 2015 falsification. By 2020 Applicant had matured and realized that he needed to be truthful with the government. His voluntary admission on the second e-QIP was the only evidence the Government had to establish the former drug use, and alleviated any security significance of his prior falsification. Applicant has also mitigated this allegation. Accordingly, paragraph 2 of the SOR is found for Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's potential for national security eligibility 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 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 pertinent facts and circumstances surrounding this case. Applicant has mitigated the concerns regarding his prior marijuana use and related falsification of a government questionnaire. However, he has not mitigated the concerns over his sister's student loan debt for which he co-signed. Overall, the record evidence creates substantial doubt as to Applicant's present suitability for national security eligibility and a security clearance.

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 F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a and 2.b:	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 or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

WILFORD H. ROSS
Administrative Judge