



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



In the matter of:)
)
) ISCR Case No. 21-01700
)
Applicant for Security Clearance)

Appearances

For Government: Andrea M. Corrales, Esq., Department Counsel
For Applicant: *Pro se*

06/07/2022

Decision

DORSEY, Benjamin R., Administrative Judge:

Applicant failed to mitigate the financial considerations and personal conduct security concerns. He mitigated the drug involvement concerns. Eligibility for access to classified information is denied.

Statement of the Case

On October 13, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations, Guideline H, drug involvement and substance misuse, and Guideline E, personal conduct. Applicant responded on December 15, 2021, and requested a decision based on the written record in lieu of a hearing.

The Government's written case was submitted on February 24, 2022. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on March 1, 2022. As of April 18, 2022, he had not responded. The case was assigned to me on May 5, 2022.

The Government exhibits included in the FORM are admitted into evidence without objection. Applicant submitted no documents with his response to the SOR.

Findings of Fact

Applicant is a 24-year-old employee of a defense contractor. He has worked for his current employer since April 2019. He earned a high school degree in 2016. Applicant has never been married and has no children. This is Applicant's first clearance application. (Items 3, 4)

In the SOR, under Guideline F of the Directive, the Government alleged that Applicant has 12 delinquent debts totaling approximately \$35,300. Applicant's delinquent debts consist of debts for repossessed vehicles, debts to City A, telecommunications debts, and medical debts. Applicant denied the debts described in SOR ¶¶ 1.a and 1.h-1.k without further elaboration. He admitted the debts described in SOR ¶¶ 1.b-1.g and 1.i without further elaboration. His admissions are adopted as findings of fact. Applicant attributed his financial difficulties to being young and not having a steady income. He claimed that he will be staying on top of his finances and his financial difficulties will not continue. He has not received any form of financial counseling. I find that the Guideline F SOR allegations are established through credit reports, court records, and Applicant's admissions. (Items 1, 2, 4-8)

The \$13,822 judgment entered in 2019 alleged in SOR ¶ 1.a has not been resolved. Applicant presented no evidence that he has made a payment, disputed this debt, offered or negotiated a payment agreement, or taken any significant action to resolve this debt. (Items 1, 7)

The \$10,120 judgment for a repossessed vehicle entered in 2019 alleged in SOR ¶ 1.b, has not been resolved. Applicant claimed that he has been making payments of \$100 per month on this judgment, however, he provided no documentation to corroborate these payments. (Items 1, 2, 4-7)

The judgments in favor of City A alleged in SOR ¶¶ 1.c through 1.f have not been resolved. Applicant presented no evidence that he has made payments, disputed these debts, offered or negotiated payment agreements, or taken any significant action to resolve these debts. (Items 1, 2, 7)

The \$169 debt for court costs and fines owed to a court in City A alleged in SOR ¶ 1.g has not been resolved. Applicant presented no evidence that he has made a payment, disputed this debt, offered or negotiated a payment agreement, or taken any significant action to resolve this debt. (Items 1, 2, 8)

The medical debts alleged in ¶¶ 1.h and 1.i have not been resolved. Applicant presented no evidence that he has made payments, disputed these debts, offered or negotiated payment agreements, or taken any significant action to resolve these debts. (Items 1, 4-6)

The telecommunications debts alleged in ¶¶ 1.j and 1.k have not been resolved. In his January 2021 subject interview, Applicant claimed that he disputed the debt in ¶ 1.k but could not remember why he disputed it. Otherwise, he has presented no evidence that he has made payments, disputed these debts, offered or negotiated payment agreements, or taken any significant action to resolve these debts. (Items 1, 4-6)

The \$9,507 debt for the balance on a repossessed vehicle alleged in ¶ 1.l has not been resolved. Applicant presented no evidence that he has made payments, disputed this debt, offered or negotiated a payment agreement, or taken any significant action to resolve this debt. (Items 1, 2, 4, 6)

Applicant used marijuana three to four times from June to July 2016. He claimed that he has not used marijuana since July 2016 and has no intention to use it again. He stated that he wants to become an FBI agent and understands that using marijuana will hurt his chances of attaining this goal. (Items 1, 4)

In September 2018, police found about two grams of marijuana in his vehicle after stopping him for speeding. Applicant was charged with possession of marijuana, first offense. In June 2019, he pleaded guilty to this offense. He was sentenced to 30 days in jail with all 30 days suspended, was required to pay court costs and fines, and his driver's license was restricted to travel to and from work and church. (Items 1-4, 9)

Applicant claimed that the marijuana that the police found in his car was not his. He claimed that he shared his car with his two brothers and another friend. He stated that he does not know whose marijuana was in his car as his brothers and his friend all denied leaving marijuana there. (Items 1, 3, 4, 9)

The Government alleged Applicant's aforementioned 2016 marijuana use and his 2018 marijuana possession charge and 2019 conviction under Guideline H of the Directive (SOR ¶¶ 2.a and 2.b). Despite telling his investigator about his 2016 marijuana use, he denied that allegation in his response to the SOR. He admitted the allegation concerning his possession of marijuana charge and conviction. His admission is adopted as a finding of fact. I find that the Guideline H SOR allegations are established through Applicant's January 2021 subject interview, court records, and Applicant's admission. (Items 1, 2, 3, 4, 9)

In October 2017, Applicant was fired from his job at a grocery store for stealing food. Applicant claimed that he stole a \$5 to \$6 plate of food for one of his co-workers who had no money and had not eaten in three days. When his manager confronted Applicant about the theft, Applicant admitted it and attempted to give his manager \$50 to repay the grocery store for the stolen food. Applicant claimed that he was fired during this meeting with his manager. Despite being required to do so, Applicant failed to report this firing on the Questionnaire for National Security Positions (SF 86) he submitted in September 2020. He intentionally failed to disclose this firing to avoid providing negative information about himself. (Items 1, 2, 4)

Applicant failed to disclose his 2016 marijuana use on his SF 86 despite being required to do so. He admitted that he intentionally failed to disclose this drug use because he did not want to look like he was involved with drugs.

Applicant failed to disclose his judgments and delinquent debts on his SF 86. He was required to report the SOR debts listed as SOR ¶¶ 1.a-1.e and 1.g-1.i. The judgment listed in SOR ¶ 1.f had not yet been entered when applicant certified his SF 86. Applicant claimed that he failed to list these debts on his SF 86 because he was rushing to complete the form, he forgot about them, or because of oversight. (Items 1, 2, 4-8)

In the SOR, under Guideline E, the Government alleged Applicant's 2017 firing and his intentional failure to report this firing in his SF 86. Under Guideline E, it also alleged Applicant's intentional failure to disclose his marijuana use and his delinquent debts in his SF 86 (SOR ¶¶ 3.a-3.d). In his response to the SOR, Applicant admitted these allegations. Applicant's admissions are adopted as findings of fact. (Items 1, 2)

Policies

This case is adjudicated 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 adjudicative guidelines (AG), which became effective on June 8, 2017.

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(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 "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

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

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

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 personnel 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts; and

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

Applicant has several financial delinquencies, some of which are several years old. These delinquencies include car note debts, telecommunications debts, medical debts, and several debts owed to City A. The evidence is sufficient to raise the above disqualifying conditions and shifts the burden to Applicant to provide evidence in mitigation.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

(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, 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

(e) 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.

Applicant attributed his financial problems to having insufficient funds to pay his debts because he was young and did not have a steady income. This cause was not beyond his control. Applicant claimed that he was making payments of \$100 per month on the debt described in SOR ¶ 1.b. However, he provided no documentary evidence of payments or of a payment arrangement with this creditor or any of the other creditors listed in the SOR. It is reasonable to expect Applicant to present documentation about the resolution of specific debts. See, e.g., ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 16, 2016). While Applicant claimed that he disputed the debt in SOR ¶ 1.k, he could not recall why he disputed it. Therefore, he has not provided evidence of a reasonable basis for his dispute.

I am unable to find that the conditions that resulted in the financial problem were largely beyond Applicant's control, that he acted responsibly under the circumstances, or that he made a good-faith effort to pay his debts. To the extent that he disputed the legitimacy of one of his past-due debts, he has neither provided documented proof to substantiate the basis of the dispute nor has he provided evidence of his efforts to resolve the issue. His financial issues are ongoing and they continue to cast doubt on his current reliability, trustworthiness, and good judgment. Financial considerations security concerns are not mitigated.

Guideline H, Drug Involvement and Substance Misuse

The security concern for drug involvement and substance misuse is set out 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 25. The following are potentially applicable in this case:

- (a) any substance misuse (see above definition); and
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

From June to July 2016 Applicant used marijuana three to four times. He was charged with possession of marijuana in 2018 and convicted in 2019. The above disqualifying conditions are applicable.

AG ¶ 26 provides conditions that could mitigate security concerns. The following is potentially applicable:

- (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.

Applicant's last illegal drug use occurred about six years ago when he was about 18 years old. He used marijuana three to four times. His use was infrequent. His last instance of possession of marijuana occurred about four years ago when he was about 20 years old. Both his use and possession occurred before he began working for his current employer or applied for a security clearance. He claimed that he has no intent to use illegal drugs in the future as use is incompatible with his career goals. Based upon these considerations, Applicant has abstained from illegal drug use for an appropriate period, and his past, illegal drug use is unlikely to recur. His past, illegal drug use no longer casts doubt on his reliability, trustworthiness, and good judgment. AG ¶ 26(a) is established. Applicant has mitigated the drug involvement and substance misuse security concerns.

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

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

(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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

(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.

Applicant was fired from a job in 2017 for stealing. He deliberately failed to divulge this firing on his SF 86 despite being required to do so. He failed to disclose his 2016 marijuana use on his SF 86 despite being required to do so. He admitted that he did not disclose this firing and his marijuana use because he was worried it would negatively impact his ability to obtain a clearance. He also intentionally failed to disclose any of the debts that he was required to on his SF 86. While he claimed that he didn't disclose his debts because he was rushed, forgot about them, or because of oversight, his admitted willingness to lie to make himself look better undermines these more innocent explanations. The above disqualifying conditions are applicable.

AG ¶ 17 provides conditions that could mitigate personal conduct security concerns. The following mitigating conditions potentially apply in Applicant's case:

(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 is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

AG ¶ 17(a) partially applies to Applicant's intentional failure to disclose the aforementioned information on his SF 86. Applicant disclosed his 2017 firing to the

Government during his interview before being confronted with those facts. He also arguably disclosed his 2016 drug use prior to being confronted, although the investigator had to press him before he came clean. However, he failed to disclose nearly all of the delinquent debts in his SOR until his investigator confronted him. AG ¶ 17(a) does not apply to Applicant's underlying conduct of theft that resulted in him being fired.

AG ¶ 17(c) does not apply to Applicant's intentional falsifications. Falsification of an SF 86 is not "minor" because it "strikes at the heart of the security clearance process." ISCR Case No. 09-01652 (App. Bd. Aug. 8, 2011). AG ¶ 17(c) partially applies to Applicant's theft on the job in 2017 because it has been five years since his firing. AG ¶ 17(c) does not fully apply because, while Applicant has not stolen at work or been fired for several years, his other deceitful behavior such as intentionally lying has occurred much more recently.

"The application of disqualifying and mitigating conditions and whole person factors does not turn simply on a finding that one or more of them apply to the particular facts of a case. Rather, their application requires the exercise of sound discretion in light of the record evidence as a whole." See, e.g., ISCR Case No. 05-03635 at 3 (App. Bd. Dec. 20, 2006). Despite Applicant having partially met two of the mitigating conditions, none of the mitigating conditions fully apply. Overall, Applicant's dishonesty and lack of candor in efforts to benefit himself leave me with concerns about his reliability, trustworthiness, or good judgment. Personal conduct security concerns are not mitigated.

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 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F, H, and E in my whole-person analysis.

The record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations and personal conduct security concerns. Applicant mitigated the drug involvement and substance misuse 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:	AGAINST APPLICANT
Subparagraphs 1.a-1.l:	Against Applicant
Paragraph 2, Guideline H:	FOR APPLICANT
Subparagraphs 2.a-2.b:	For Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a-2.d:	Against Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Benjamin Dorsey
Administrative Judge