



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



In the matter of:)
)
) ISCR Case No. 20-00520
)
Applicant for Security Clearance)

Appearances

For Government: Sakeena Farhath, Esq., Department Counsel
For Applicant: *Pro se*

January 12, 2023

Decision

TUIDER, Robert, Administrative Judge:

Applicant failed to mitigate security concerns regarding Guidelines H (drug involvement and substance misuse) and F (financial considerations). Eligibility for access to classified information is denied.

Statement of the Case

On November 8, 2018, Applicant submitted a Questionnaire for National Security Positions (SF-86). On March 18, 2022, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines H and F. The SOR detailed reasons why the CAF was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

On June 13, 2022, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the file of relevant material (FORM), dated August 25, 2022, was provided to him by letter dated August 26, 2022. Department Counsel attached as evidence to the FORM Items 1 through 6.

Applicant was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation. He did not submit any information within the 30-day period. I received Items 1 through 6 into evidence. On November 29, 2022, the case was assigned to me.

Findings of Fact

Background Information

[Note – The limited background information regarding Applicant was derived from the FORM and was the most current information available.]

Applicant is a 62-year-old delivery driver employed by a defense contractor since September 2018. His continued employment is contingent on him obtaining a security clearance. He previously held a Secret security clearance when he was on active duty in the U.S. Navy, discussed below.

Applicant graduated from high school in June 1979. He was awarded an associate's degree in November 1996. He has been married three times, the first marriage was from 1982 to 1995, and the second marriage was from 1995 to 2001. Both of those marriages ended by divorce. He married a third time in 2004. He has one adult biological child and five adult stepchildren. He served in the Navy from 1986 to 1996, and was honorably discharged.

Drug Involvement and Substance Misuse

Applicant disclosed his past drug use on his November 8, 2018. SF-86 (Item 3) He said that he used marijuana between about May 1976 to about October 2018. (SOR ¶ 1.a) He admitted the SOR allegation in his answer but offered no additional details. (Items 1, 2, 3) In his SF-86, Applicant stated that he used marijuana for anxiety and insomnia. The "norm" for him was to use marijuana at the end of the day as a sleep aid. His doctor offered him "pills" for his anxiety and insomnia, but Applicant declined that option because he did not like pills, especially if they were addictive. He stopped using marijuana when he was offered his current job. (Item 3)

During his January 22, 2019 Office of Personnel Management (OPM) interview, Applicant reiterated what he stated when completing his SF-86. However, he added that since he stopped using marijuana in October 2018, he has no issue with anxiety or insomnia and has no plans to use marijuana in the future. Getting this job was a second chance for him to get his life in order. He purchased his marijuana in small amounts for \$20 through acquaintances, whose "names are unknown." He did not have a medical marijuana card. Applicant smoked marijuana with his wife in the evenings. He claimed that he does not associate with anyone who uses marijuana. Applicant has not undergone a drug assessment for drug dependency, nor has he participated in any drug treatment program or counseling. Only his wife and security officials know of his marijuana use, and he told the OPM interviewer that his use cannot be used for blackmail or coercion. (Item 6)

Financial Considerations

SOR ¶ 2.a alleges that Applicant is indebted to his mortgage company for an account that went into foreclosure, with a deficiency balance of \$60,151. He denied this allegation in his SOR answer, stating “no attempt to collect.” He did not provide any further details regarding any efforts he made to resolve this situation. (Items 1, 2)

This delinquent SOR debt is established by an April 22, 2019 circuit court final judgment in favor of Applicant’s mortgage company, and by his November 8, 2019 credit report, which reports that this account went into foreclosure in 2015. (Items 4, 5) During Applicant’s January 22, 2019 OPM interview, he stated that his property manager remodeled a rental house belonging to Applicant without his authorization, which caused “financial difficulties” for him. Additionally, his tenant was not able to pay her rent. Applicant estimated this situation began in 2014. Applicant was late on his mortgage because of these issues related to his rental house. (Item 6)

Applicant also stated during that same OPM interview that his financial problems were tied to events beyond his control because he was unemployed and had health issues which prevented him from making timely payments to his creditors. He has not sought financial counseling or debt consolidation services. He stated that he lives within his means and no one can question his ability or willingness to pay his debts. (Item 6) A review of Applicant’s November 8, 2018 SF-86 reflects periods of unemployment from September 2017 to February 2018; and August 2016 to November 2016. (Item 3)

As noted above, Applicant denied SOR ¶ 2.a in his answer, asserting that the creditor had not attempted to collect the deficiency balance. He provided no evidence of his own efforts or intentions to resolve the debt. SOR ¶ 2.a is not resolved.

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 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 “[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 clearance favorable 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

Drug Involvement and Substance Misuse

AG ¶ 24 describes the security concern about drug involvement and substance misuse:

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.

AG ¶ 25 provides one condition that could raise a security concern and may be disqualifying in this case: “(a) any substance misuse (see above definition).” The record established this disqualifying condition, requiring additional inquiry about the possible applicability of mitigating conditions.

AG ¶ 26 lists two potentially mitigating conditions for Applicant’s conduct:

(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.

The Appeal Board concisely explained Applicant’s responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant’s security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. *See Directive ¶ E3.1.15*. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.” *Directive, Enclosure 2 ¶ 2(b)*.

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

Concerning AG ¶ 26(a), there are no “bright line” rules for determining when conduct is “recent.” The determination must be based “on a careful evaluation of the totality of the record within the parameters set by the Directive.” ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). For example, the Appeal Board determined in ISCR Case No. 98-0608 (App. Bd. Aug. 28, 1997), that an applicant's last use of marijuana

occurring approximately 17 months before the hearing was not recent. If the evidence shows, “a significant period of time has passed without any evidence of misconduct,” then an administrative judge must determine whether that period of time demonstrates “changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation.” ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004).

In ISCR Case No. 04-09239 at 5 (App. Bd. Dec. 20, 2006), the Appeal Board reversed the judge’s decision denying a clearance, focusing on the absence of drug use for five years prior to the hearing. The Appeal Board determined that the judge excessively emphasized the drug use while holding a security clearance, and the 20 plus years of drug use, and gave too little weight to lifestyle changes and therapy. For the recency analysis, the Appeal Board stated:

Compare ISCR Case No. 98-0394 at 4 (App. Bd. June 10, 1999) (although the passage of three years since the applicant's last act of misconduct did not, standing alone, compel the administrative judge to apply Criminal Conduct Mitigating Condition 1 as a matter of law, the Judge erred by failing to give an explanation why the Judge decided not to apply that mitigating condition in light of the particular record evidence in the case) with ISCR Case No. 01-02860 at 3 (App. Bd. May 7, 2002) (“The administrative judge articulated a rational basis for why she had doubts about the sufficiency of Applicant's efforts at alcohol rehabilitation.”) (citation format corrections added).

By his own admission, Applicant has a 42-year history of marijuana use and involvement. His use began in 1976 and continued to October 2018, shortly before he submitted his SF-86. His motivation to stop using marijuana was his desire to pursue his current employment, which requires him to have a clearance. An applicant who acts *only* in the face of an “immediate threat to his own interests” may “lack the judgment and self-discipline” expected of a clearance holder. ISCR Case No. 17-00569 at 4 (App. Bd. Sept. 18, 2018) Applicant acquired his marijuana in small amounts “off the street” from persons with unknown names, and did not acquire a marijuana card when it became available in his state of residence.

Applicant asserts that he has turned his life around, that he no longer wants to use marijuana, and will not use marijuana in the future. Additionally, his assertions during his OPM interview that he is drug-free and does not intend to use drugs in the future lack corroboration. While Applicant receives credit for self-reporting his past drug use on his SF-86 as required, that alone is insufficient to mitigate his self-admitted 42-year plus history of marijuana use. Accordingly, mitigation credit under AG ¶ 26(a) is not warranted at this time.

Applicant is able to receive partial credit for acknowledging his drug involvement and substance misuse under AG ¶ 26(b), for disassociation with drug-using associates and contacts, and changing or avoiding the environment where drugs were used under subsections (1) and (2). However, given the length of his marijuana use and the relative

recency of his disavowals of future use, mitigation of security concerns under Guideline H is not warranted.

Financial Considerations

AG ¶ 18 articulates the security concern for financial considerations:

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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts;" and "(c) a history of not meeting financial obligations." The record established these two disqualifying conditions requiring additional inquiry about the possible applicability of mitigating conditions.

AG ¶ 20 lists seven potential mitigating conditions:

(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;

(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 is under control;

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

(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;

(f) the affluence resulted from a legal source of income; 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. Contrary to Applicant's denial, the Government's credit report and final judgment demonstrate that Applicant failed to satisfy his outstanding debt with his mortgage company. His assertion that his mortgage company did not attempt to collect the mortgage debt is not indicative of good faith or responsible behavior on his part. It is also inconsistent with fact that the creditor obtained the April 22, 2019 court judgment for the deficiency balance. Furthermore, Applicant did not attempt to address this debt even after receiving his March 18, 2022 SOR and his August 25, 2022 FORM.

Since the debt is established by the Government's evidence, Applicant has the burden to show what he is doing about it. Even though this is a single delinquent debt, it involves a substantial sum and remains an unmitigated financial security concern.

Conclusion

In addition to evaluating the facts and applying the appropriate adjudicative factors under Guidelines H and F, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(d). Applicant is gainfully employed and is presumed to be a mature, responsible citizen. Nonetheless, without other information suggesting his longstanding drug involvement and substance misuse problems and indebtedness are being or have been addressed, doubts remain about his suitability for access to classified information. Protection of the national interest is the principal focus of these adjudications. Accordingly, those doubts must be resolved against Applicant.

Applicant chose to rely on the written record. In so doing, however, he failed to meet his burden to submit sufficient mitigating evidence to supplement the record with relevant and material facts regarding his circumstances, articulate his position, and mitigate the drug involvement and substance misuse and financial considerations security concerns. By failing to provide such information, and in relying on an explanation lacking sufficient detail to fully establish mitigation, drug involvement and substance misuse and financial considerations security concerns remain.

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
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

In light of the record as a whole, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. National security eligibility is denied.

ROBERT TUIDER
Administrative Judge