



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



In the matter of:)	
)	
)	ISCR Case No. 21-02679
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Brian Farrell, Department Counsel
For Applicant: *Pro se*

August 28, 2023

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On January 9, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline E, Personal Conduct and Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 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 (AG) effective for cases after June 8, 2017.

Applicant answered the SOR on January 18, 2023. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) On March 14, 2023, Department Counsel submitted the Government’s written case. A complete copy of the File of Relevant Material (FORM), containing six Items, was mailed to Applicant and received by him on March 25, 2023. The FORM notified

Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant did not respond to the FORM. Government Items 1 through 6, were admitted into evidence without objection and referenced hereinafter as Government Exhibits 1 through 6.

Findings of Fact

Applicant is 43 years old. He is divorced and has no children. He has an Associate degree and no prior military service. Applicant is employed by a defense contractor as a Gardener. He is seeking to obtain a security clearance in connection with his employment. He has never held a security clearance before.

Guideline E – Personal Conduct

The SOR alleges that Applicant's conduct has involved questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that raise questions about his reliability, trustworthiness, and ability to protect classified or sensitive information. In his answer, Applicant admits each of the allegations under this guideline.

Applicant was unemployed from August to October 2020. He had various odd jobs between 2013 and 2020. He has no prior security clearances.

In April 2009, Applicant was cited by Fort Rucker Military Police for possession of marijuana in the second degree. There are no further details concerning this citation.

In about March 2017, while employed for a city as a government worker, Applicant was terminated from his employment for testing positive for marijuana. In February 2017, he consumed a brownie containing marijuana with a friend. (Government Exhibit 4.) He stated that he took a random drug test two weeks later and tested positive for marijuana. Applicant's employment records reveal that Applicant was terminated for violating the drug policy which prohibits the use of illegal drugs. He was also most likely under the influence of marijuana while on the job, as he was observed driving a John Deere gator into traffic, and was observed having slurred speech and not being able to balance or stand. (Government Exhibit 5.)

Applicant completed a security clearance application dated November 11, 2020. In response to Section 23 - Illegal Use of Drugs or Drug Activity, which asked, "In the last seven years, have you illegally used any drugs or controlled substances?" Applicant answered, "NO." (Government Exhibit 3.) This was a false answer. Applicant failed to disclose the information set forth above.

In the same security clearance application dated November 11, 2020, in response to Section 13C – Employment Record, Applicant was asked, "Have any of the following happened to you in the last seven years at employment activities that you have not previously listed? Fired from a job; quit after being told you would be fired; left

by mutual agreement following charges or allegations of misconduct; ect..." Applicant answered, "NO." (Government Exhibit 3.) This was a false answer. Applicant failed to disclose that he was fired from his employment for testing positive for marijuana. Applicant's employee records from the city confirm this fact. (Government Exhibit 5.)

During an interview with an authorized investigator working for the U.S. Department of Defense on January 4, 2021, Applicant was asked if he had used any illegal drugs. He initially unequivocally denied any drug involvement. Applicant stated that he has never used illegal drugs in his life; never been involved in illegal drugs; and does not associate with those that do use illegal drugs. (Government Exhibit 4, at pg.13.) Only after he was confronted by the investigator about the information revealed during his investigation involving drug use, did Applicant admit that he had used marijuana in 2017.

During that same interview with the investigator on January 4, 2021, Applicant was asked about his involvement with possession of marijuana at Fort Rucker in April 2009. Only when confronted, Applicant stated that he was questioned about a jacket that was found to have marijuana paraphernalia. He stated that when questioned about it by the military police, he denied that the jacket was his and that he was released without being charged, when in fact, Applicant was cited for possession of marijuana.

During another interview with the investigator on January 13, 2021, Applicant was questioned about his termination from his employment in March 2017. Applicant stated that he "left for a better job," when in fact he was terminated for failing a drug test. (Government Exhibit 4, at pg. 14.) Applicant stated that he ate a marijuana brownie about two weeks before being given a random drug test and that he was not impaired when he returned to work. This was obviously false. Applicant was tested for drug abuse because he displayed abnormal or erratic behavior consistent with drugs or alcohol while at work. Applicant's employment records indicate that his supervisor observed abnormal and erratic behavior associated with drug use. The physical signs and symptoms noted were slurred speech, unsteady gait, dilated pupils, blood shot or watery eyes, and the odor of marijuana. (Government Exhibit 5.)

Applicant deliberately falsified his security clearance application dated November 11, 2020; and provided false information to the investigator during personal interviews on January 4, 2021; and January 13, 2021, in an effort to conceal his illegal drug use and the adverse impact it has had on his work history. It was only when he was confronted with adverse information from the investigator did he provide truthful answers to the Government.

Guideline F - Financial Considerations

The SOR alleges that Applicant incurred delinquent debt totaling in excess of approximately \$25,650. He admits the three delinquent debts with some explanation. Applicant's credit report dated September 28, 2022, confirms these debts. (Government Exhibits 6.)

The following debts are of security concern:

1.a. Applicant is indebted to a creditor for an account that was charged off in the approximate amount of \$22,938. There is no evidence of a payment history or documentation showing that he has taken steps to resolve the debt. The debt remains owing.

1.b. Applicant is indebted to a creditor for an account that was charged off in the approximate amount of \$1,978. There is no evidence of a payment history or documentation showing that he has taken steps to resolve the debt. The debt remains owing.

1.c. Applicant is indebted to a creditor for an account that was placed for collection in the approximate amount of \$734. There is no evidence of a payment history or documentation showing that he has taken steps to resolve the debt. The debt remains owing.

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). 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. 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 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 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 as to 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 E - Personal Conduct

The security concern for the personal conduct guideline 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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are 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 national security eligibility or trustworthiness, or award fiduciary responsibilities;

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative; and

(c) credible adverse information that is not explicitly covered under any other guideline and may not sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicting that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

(3) a pattern of dishonesty or rule violations.

On a number of occasions, Applicant deliberately lied to the Government in response to questions about his illegal drug involvement, and the impact it has had on his work history both on his security clearance application dated November 11, 2020, and during his interviews with the DoD investigator on January 4, 2021, and January 13, 2021.

AG ¶ 17 provides conditions that could mitigate security concerns. I have considered each of the mitigating conditions under AG ¶ 17 below:

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

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(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;

(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;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

None of the mitigating conditions are applicable. Applicant lied to the Government about his illegal drug involvement and the impact it has had on his work history on his security clearance application dated November 11, 2020, and during his interviews on January 4, 2021, and January 13, 2021. Applicant's duty and responsibility is to ensure that the information he provided to the Government is accurate and truthful to the best of his ability. Applicant was clearly dishonest. There is no excuse for his dishonesty that calls his character into question. Applicant's deliberate falsifications and continuing disingenuous answers preclude a finding of good judgment, reliability, and trustworthiness. To be entrusted with the privilege of holding a security clearance, one is expected to be honest and truthful at all times, and to know and understand the rules and regulations that apply to them, and to always abide by those rules. Under the particular facts of this case, Applicant falls short of this requirement and has not demonstrated this awareness. By failing to provide truthful answers on the security clearance application, and during his personal interviews, he has shown that he cannot be trusted. Applicant does not meet the qualifications for access to classified information. Accordingly, the personal conduct security concern has not been mitigated. This guideline is found against Applicant.

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. 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.

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

(c) a history of not meeting financial obligations.

Applicant has incurred debt that he has been unable to pay. The evidence is sufficient to raise the above disqualifying condition.

The following mitigating conditions under Financial Considerations are potentially applicable under AG ¶ 20:

(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; 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 remains excessively indebted. His credit report confirms this indebtedness. He has not made a good-faith effort to resolve his debts. In fact, he has submitted nothing in mitigation. Accordingly, the financial consideration security concern has not been mitigated. This guideline is found against Applicant.

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. Applicant has not been honest, candid or truthful on his security clearance application and during interviews with the DoD investigators regarding his illegal drug involvement. He also remains delinquently indebted in the amount in excess of \$25,000.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I conclude Applicant has not mitigated the Personal Conduct and Financial Considerations 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 E:	AGAINST APPLICANT
Subparagraphs 1.a. through 1.g.	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraphs 2.a. through 2.c.	Against 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.

Darlene Lokey Anderson
Administrative Judge