



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



In the matter of:)
)
) ISCR Case No. 22-01764
)
Applicant for Security Clearance)

Appearances

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

03/29/2024

Decision

Curry, Marc E., Administrative Judge:

Applicant mitigated the security concern generated by his driving under the influence arrest in 2019, but failed to mitigate the security concerns generated by his marijuana use and his unpaid delinquent debt. Clearance is denied.

Statement of the Case

On December 30, 2022, the Department of Defense Counterintelligence and Security Agency Consolidated Adjudication Services (CAS) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline H, drug involvement, Guideline J, criminal conduct, and Guideline F, financial considerations, explaining why it was unable to find it clearly consistent with the national security to grant him security clearance eligibility. The CAS took the action 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 *Nat. Sec. Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG) effective within the DOD on June 8, 2017.

In an undated answer, Applicant admitted the SOR allegations and requested a hearing. The case was assigned to me on July 18, 2023, and on August 31, 2023, the Defense Office of Hearings and Appeals issued a notice of hearing scheduling the case for September 27, 2023. Applicant failed to appear. On October 4, 2023, he contacted me, explained why he did not appear, and requested that I reschedule the hearing. Department Counsel did not object, and I rescheduled the case for February 21, 2024. The hearing was held as rescheduled. I received five Government exhibits, marked as GE 1 through GE 5. The transcript (Tr.) was received on February 29, 2024.

Findings of Fact

Applicant is a 41-year-old, single man. He has a high school diploma. For the past two and a half years, he has been working as a painter for a defense contractor. Previously, he worked for five years as a custodian. (Tr. 13)

Applicant smokes marijuana. He purchases it at a marijuana dispensary in packs of four pre-rolled cigarettes. (Tr. 18) Typically, this amount lasts him about one month. (Tr. 20) He uses it to control his anxiety, but never obtained a medical license to purchase it. He has never attended therapy or sought medical treatment for his anxiety. He last used marijuana the week before the hearing. He intends to continue using marijuana in the future. (Tr. 30) When Department Counsel asked him, during cross-examination, to elaborate, he replied that he is not going to stop using marijuana “because [he] was never interested in getting a security clearance.” (Tr. 30)

In 2019, Applicant, while driving home after consuming nine beers, rear-ended a police cruiser that was idling at a stop light. (Tr. 36) Subsequently, he was arrested and charged with driving while impaired (DUI). He pleaded guilty, whereupon his driver’s license was suspended for a year, and he was ordered to take a drivers’ safety course. (Tr. 38) Applicant complied with the court order. He had never been arrested before this episode, and he has not been arrested since this episode.

While Applicant’s driver’s license was suspended, he had no means of getting to work, and had to pay \$80 round trip daily for an *Uber*. Subsequently, he began experiencing financial problems. By early 2022, he had incurred approximately \$9,000 of delinquent debt. (GE 3, 4)

Applicant has taken no steps to satisfy these outstanding debts. He contends that he can start satisfying them the month after the hearing. When Department Counsel asked him during cross-examination why he did not begin satisfying these debts any sooner, he responded that he tends to procrastinate and does not take action on tasks “until there is a fire under him.” (Tr. 46)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing

that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overall adjudicative goal is a fair, impartial, and commonsense decision. 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Analysis

Guideline H, Drug Involvement and Substance Abuse

The security concerns about drug involvement and substance abuse are set forth 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.

Applicant has a history of marijuana use, and he intends to continue using it in the future. AG ¶¶ 25(a), “any substance abuse,” and AG ¶ 25(g), “expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse,” apply. Applicant’s unequivocal intent to continue using marijuana renders any of the mitigating conditions inapplicable.

Guideline J, Criminal Conduct

Under this guideline, “criminal conduct creates doubt about a person’s judgment, reliability, and trustworthiness, [and] by its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.” (AG ¶ 30) Applicant’s 2019 DUI conviction triggers the application of AG ¶ 31(b), “evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.” Applicant complied with the terms of his sentence and has not committed any more alcohol-related offenses in the intervening five years. I conclude that AG ¶ 32(a), “so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment,” applies. AG ¶ 32(d), “there is evidence of successful rehabilitation; including the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive compounding involvement,” also applies. I conclude Applicant mitigated the criminal conduct security concern.

Guideline F, Financial Considerations

Under this guideline, “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.” (AG ¶ 18) Applicant’s delinquencies trigger the application of AG ¶ 19(a), “inability to satisfy debts; and AG ¶ 19(c), “a history of not meeting financial obligations.”

Applicant’s nonchalant attitude about his delinquencies, and his failure to make any efforts to resolve them renders any of the potential mitigating conditions inapplicable. I conclude that he has failed to mitigate the financial considerations security concerns.

Whole-Person Concept

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

- (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.

In reaching my conclusion, I considered Applicant's lack of interest in obtaining a security clearance. Considering this case in the context of the whole-person concept, I conclude Applicant has failed to mitigate the security concerns.

Formal Findings

Formal findings for 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 H:	AGAINST APPLICANT
Subparagraphs 1.a – 1.b:	Against Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 3, Guideline F:	AGAINST APPLICANT
Subparagraph 3.a – 3.e:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the security interests of the United States to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Marc E. Curry
Administrative Judge