



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



In the matter of:)
)
) ISCR Case No. 23-00787
)
Applicant for Security Clearance)

Appearances

For Government: John Hannink, Esq., Department Counsel
For Applicant: *Pro se*

05/13/2024

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant has not provided evidence sufficient to mitigate the national security concern arising from his problematic financial history and his drug involvement and substance abuse. Applicant’s eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted his most recent security clearance application (SCA) on August 19, 2021. The Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) on April 27, 2023, detailing security concerns under Guideline F, financial considerations, and Guideline H, drug involvement and substance abuse. The DOD CAF acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

Applicant submitted an undated answer to the SOR (Answer) and elected a decision on the written record by an administrative judge of the Defense Office of Hearings and Appeals (DOHA). Department Counsel submitted the Government’s file of

relevant material (FORM) on December 6, 2023, including documents identified as Items 1 through 11. DOHA sent Applicant the FORM on the same day, and he received it on December 18, 2023. He was afforded 30 days after receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not respond to the FORM. The SOR and the Answer are the pleadings in the case. (Items 1 and 2, respectively.) Items 3 through 11 are admitted without objection. The case was assigned to me on April 2, 2024.

Findings of Fact

After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact:

Applicant is 33 years old, never married, and has no children. He is a high school graduate and took online college courses from August 2010 to November 2010. Since May 2021, he has worked for a defense contractor. He was granted a Secret security clearance in May 2021. Except for a period of unemployment from April 2021 to May 2021, he has been employed full time since June 2013. (Item 3.)

Under Guideline F, the SOR alleged that Applicant: (a) “failed to pay, as required, Federal income tax returns for the tax year 2020”; (b) “failed to pay, as required, [state] income for the tax year 2020,” (c) is indebted to the state in the amount of \$339 for unpaid vehicle property taxes for tax year 2019, and (d) has six delinquent consumer debts totaling \$3,765. (Item 1.) He stated “I admit” to each allegation followed by generic explanations that did not address each specific allegation. (Item 2.) The consumer debts are supported by three of the Government’s credit reports. Those debts became past due or went into collection between November 2018 and July 2021. (Items 6-8.)

In his explanations, Applicant cited “a few professional and personal matters that have affected [his] focus.” He also said that he has been working “on a very demanding contract” that became “overwhelming.” He also pointed to “some personal tragedies, . . . including the loss of a few loved ones” and “ugly family matters that came from it.” He referred to 2021 “payment arrangements” with “the majority of debt holders” and is working with a CPA to address tax issues. He claimed he mailed his 2020 return and received a “rebate” (times not stated). He did not provide any documents supporting his explanations. (Item 2.)

Under Guideline H, the SOR alleged that Applicant used and purchased marijuana with varying frequency from about August 2019 to about May 2021, including use after being granted a security clearance by DOD in April 2021. (Item 1.) He admitted that allegation with an explanation. He is certain that after he received confirmation of his clearance, he “did not engage in making any illegal purchases as [he] had before.” He did not provide the date in May 2021 when he received that confirmation, but he “may have finished up what remaining product [he] had.” He concluded his Answer as follows: “[At] the current time, I have been abiding by both US and Nation A federal laws, as well as the considerations for my clearance, in this regard, and do not plan on engaging in any further risky behavior that might put myself or my work at risk.” (Item 2.)

In Applicant's March 19, 2021 personal subject interview (PSI), Applicant discussed four of his delinquent consumer debts, SOR ¶¶ 1.e, 1f, 1.h, and 1.i. He did not dispute any of those debts. He either forgot to pay those debts or did not know why he did not pay them. The summary of his closing statement encapsulates his plan for those debts: "[He] claimed he will contact each creditor that has a balance and make every effort to make out an arrangement to satisfy all delinquent debts in full." (Item 11.) He produced no documents evidencing those efforts.

In his PSI, Applicant also discussed his marijuana use. He used marijuana from August 2019 until June 2020, when he stopped because he thought he was having an allergic reaction. When he learned in November 2020 that marijuana was not the cause of his symptoms, he resumed using marijuana. At the time of his PSI, his last use of marijuana was in early March 2021. From August 2019 to February 2021, he purchased marijuana about once a month from an unknown friend of a friend. He used marijuana two to four times per week. He always used it by himself at his home. He does not feel dependent on marijuana, and it makes him feel calm and less anxious. He would use marijuana again unless he was not able to due to his clearance. (Item 11.)

Law and Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

The adjudicative 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(a), 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 A2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an 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.

Analysis

Guideline F, Financial Considerations

The security concern relating to Guideline F 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. . . .

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Guideline F notes conditions that could raise security concerns under AG ¶ 19. The followings conditions are applicable in this case:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (f) failure to file . . . annual Federal, state or local income tax returns or failure to pay annual Federal, state or local income tax as required.

SOR ¶ 1.a alleged that Applicant "failed to pay, as required, Federal income tax returns for the tax year 2020." Failure to "pay Federal income tax returns" is not a

disqualifying condition under AG ¶ 19(f). Therefore, I find in favor of Applicant on SOR ¶ 1.a.

SOR ¶ 1.b alleged that Applicant “failed to pay, as required, [state] income for the tax year 2020.” “Failure to pay, as required, [state] income” is not a disqualifying condition under AG ¶ 19(f). Therefore, I find in favor of Applicant on SOR ¶ 1.b.

SOR ¶ 1.c. alleged that Applicant is indebted to the [state] for \$339 for unpaid vehicle property taxes for tax year 2019. This tax debt is established by his admissions. Therefore, I find against him on SOR ¶ 1.c.

The six consumer debts are established by Applicant’s admissions and three of the Government’s credit reports. Therefore, AG ¶¶ 19(a) and (c) apply. The total amount of these delinquent debts is \$3,765. The magnitude of those debts does not raise national security concerns under Guideline F. Therefore, I find in favor of him on SOR ¶¶ 1.d through 1.i.

Guideline H: Drug Involvement and Substance Misuse

Under AG H, illegal drug use may raise questions about a person’s ability or willingness to comply with laws, rules, and regulations. AG ¶ 24 sets forth the concern, as follows:

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.

In analyzing the facts of this case, I considered the following disqualifying and mitigating conditions:

AG ¶ 25(a) any substance misuse (see above definition);

AG ¶ 25(c) illegal possession of a controlled substance, including . . . purchase; and

AG ¶ 25(f) any illegal drug use while granted access to classified information or holding a sensitive position.

The potentially applicable mitigating conditions here are quoted below:

AG ¶ 26(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

AG ¶ 26(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.

Marijuana is a Schedule I controlled substance, and possession of it is regulated by the federal government under the Controlled Substances Act. 21 U.S.C. § 811 *et seq.* The knowing or intentional possession and use of any such substance is unlawful and punishable by imprisonment, a fine or both. 21 U.S.C. § 844. In an October 25, 2014 memorandum, the Director of National Intelligence affirmed that the use of marijuana is a security concern. James R. Clapper, Director of National Intelligence, Memorandum: *Adherence to Federal Laws Prohibiting Marijuana Use* (October 25, 2014). See also <http://www.dea.gov/druginfo/ds.shtml>

More recently, on December 21, 2021, the Director of National Intelligence signed the memorandum, *Security Executive Agent Clarifying Guidance Concerning Marijuana for Agencies Conducting Adjudications of Persons Proposed for Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*. It emphasizes that federal law remains unchanged with respect to the illegal use, possession, production and distribution of marijuana. Individuals who hold a clearance or occupy a sensitive position are prohibited by law from using controlled substances. Disregard of federal law pertaining to marijuana (including prior medicinal or recreational marijuana use) remains relevant, but not determinative, to adjudications of eligibility. Agencies are required to use the "whole-person concept" stated under SEAD 4, to determine whether the applicant's behavior raises a security concern that has not been mitigated.

Applicant admitted in his most recent SCA, his PSI, and in his Answer that he purchased marijuana from August 2019 to February 2021 and used it until May 2021 or perhaps for some unspecified time after May 2021. Therefore, AG ¶¶ 25(a) and (c) apply. The question is whether any mitigating conditions apply.

With a pause from June to November 2020, Applicant purchased and used marijuana between August 2019 and May 2021 or perhaps a bit longer. That is not that long ago, and using two to four times a week is not infrequent. His use was for about two years. His abstinence has been for three years. There does not appear to be any unusual

circumstances that contributed to his usage. Given that his period of abstinence is just slightly longer than his period of usage, I find that mitigating conditions AG ¶¶ 25(a) and (b) do not apply.

The SOR did not plead that Applicant engaged in “illegal drug use *while granted access to classified information.*” (Emphasis added.) Therefore, AG ¶ 26(f) does not apply. In any event, in ISCR Case No. 20-03111 at 3 (App. Bd. Aug. 10, 2022), the Appeal Board held that access to classified information has two elements in addition to eligibility. They are that: (1) an applicant must have signed a nondisclosure agreement (NDA); and (2) an applicant must have a need-to-know (NTK). Here, the record does not show that Applicant has signed an NDA and has a NTK. Thus, the record would not support an AG ¶ 26(f) allegation.

Whole-Person Concept

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. AG ¶¶ 2(a) and (d)(1)-(9) (explaining the “whole-person” concept and factors). In my analysis above, I considered the potentially disqualifying and mitigating conditions and the whole-person concept in light of all the facts and circumstances surrounding this case.

I have incorporated my comments under Guidelines F and H in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under those guidelines and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by financial considerations or drug involvement and substance misuse.

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 and 1.b:	For Applicant
Subparagraphs 1.c – 1.i:	Against Applicant
Paragraph 2, Guideline H:	Against Applicant
Subparagraph 2.a:	Against Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

Philip J. Katauskas
Administrative Judge