



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



In the matter of:)
)
) ISCR Case: 23-00832
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

10/24/2024

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of Case

On May 20, 2022, Applicant submitted a security clearance application (SF-86). On April 21, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudications Services (DCSA CAS) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guidelines F (Financial Considerations), H (Drug Involvement and Substance Misuse), and J (Criminal Conduct). (Item 1.) The action was taken 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective June 8, 2017.

Applicant answered (Answer) the SOR on June 8, 2023. He denied all of the SOR allegations except 1.a, and 3.a~3.c, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 1.) On February 29,

2024, Department Counsel amended the SOR by adding allegations 1.f. and 1.g. under Financial Considerations, both of which Applicant denied, and submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing ten Items, was mailed to Applicant on February 29, 2024, and received by him on March 14, 2024. 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 responded to the FORM, with five Enclosures, (Response) on March 26, 2024. This case was assigned to the undersigned on June 24, 2024.

Findings of Fact

Applicant is 42 years old. He is currently married; but previously divorced, with three children and one stepchild. (Item 2 at pages 5, 23~24 and 28~30.) He attributes his financial difficulties to his divorce, and to a theft from his former business. (Response at page 2.)

Guideline F – Financial Considerations

1.a. In his Answer, Applicant admits he has a past-due debt to Creditor A in the amount of \$3,208. In his Response, however, he avers, "I have settled that debt," referring to his Enclosure A. This enclosure shows a "withdrawal" of \$2,567 from Applicant's bank, accredited to Creditor A. There is no evidence, however, that this admitted past-due debt has been settled or completely satisfied. This allegation is found against Applicant.

1.b. Applicant denies a past-due debt to Creditor B in the amount of \$2,630. He avers that this "medical bill is for my ex-wife's son." On Applicant's October 2022 credit report, this "MEDICAL . . . ACCOUNT INFORMATION IS DISPUTED" by Applicant. (Item 8 at page 2.) Furthermore, this alleged past-due debt does not appear on Applicant's subsequent February and June 2023 credit reports. (Items 9 and 10.) This allegation is found for Applicant.

1.c Applicant denies a past-due debt to Creditor C in the amount of \$11,784. He has settled this past-due auto loan for \$1,767, with monthly instalments of \$294. This is evidenced by a "confirmation" of Applicant's "settlement arrangement" by Creditor C. (Item 1 at page 8.) I find that Applicant is making a good-faith effort to address this disputed debt.

1.d. Applicant denies a past-due debt to Creditor D in the amount of \$43,007. This mortgage loan was transferred to Applicant's former spouse upon the dissolution of their marriage. Applicant's current balance is "0.00," as evidenced by documentation from Creditor D. (Item 1 at pages 9~13.) This allegation is found for Applicant.

1.e. Applicant denies a past-due debt to Creditor E in the amount of \$7,968. This debt has been paid through Applicant having his wages garnished, as evidenced by documentation showing the garnishment has been completed. (Item 1 at pages 14~20.) This allegation is found for Applicant.

1.f. Applicant denies a past-due debt to Creditor F in the amount of \$10,149. He offers documentation showing this debt has been reduced to \$8,949, and avers he is making monthly payments of \$372 towards this debt, but has offered nothing further in support of his averment. (Response, Enclosure B.) Without evidence of said payments, this allegation is found against Applicant.

1.g. Applicant denies a past-due debt to Creditor G in the amount of \$7,968. He offers documentation showing this debt has been reduced to \$3,455, and avers he is making monthly payments of \$215 towards this debt, but has offered nothing further in support of his averment. (Response, Enclosure C.) Without evidence of said payments, this allegation is found against Applicant.

Guideline H - Drug Involvement and Substance Misuse

2.a. Applicant denies that he used the prescription medication Adderall, not prescribed to him, from about April 2019 to about April 2021. In his Answer, Applicant avers that he only “used the medication one time in April 2019.” This is contrary to Applicant’s May 2022 SF-86, wherein he admits to the dates alleged and avers “on separate occasions my wife gave me some of her pain killers and muscle relaxers for a recurring back pain.” (SF-86 at page 47.)

2.b. Applicant denies that he used Cocaine with varying frequency, from about May 2018 to about April 2019, while in possession of a security clearance. In his Answer, Applicant avers that he only “used [it] on the occasion of one weekend.” This is contrary to Applicant’s May 2022 SF-86, wherein he admits to the dates alleged and avers “there were 2~3 occasions . . . [he recalls] using cocaine between 2018 and 2019.” (SF-86 at pages 45~46.)

Guideline J - Criminal Conduct

(The Government does not allege that Applicant’s above, alleged drug involvement constitutes criminal conduct.) The allegations will be addressed chronologically.

3.c. Applicant admits that about February 2009, he accepted Non-Judicial Punishment under Article 15 of the Uniform Code of Military Justice for Drunken or Reckless Operation of a Vehicle. He was reduced in rank from E-4 to E-2, restricted for 45 days, given 45 days extra duty, and forfeitures.

3.b. Applicant admits that about November of 2014, he pled guilty to Driving Under the Influence (DIU). He was sentenced to pay court costs, fined, and placed on probation for one year.

3.a. Applicant admits that in about July 2020, he was charged with DUI. The case was dismissed.

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 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 applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person applying for national security eligibility seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of EO 10865, "[a]ny

determination under this order adverse to an applicant shall be a determination 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 concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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. . . .

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant had significant past-due indebtedness. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged financial difficulties:

- (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.

Although Applicant can attribute much of his financial difficulties to one of his divorces, he still has past-due debts totaling over \$13,000 that he has yet to address. Financial Considerations is found against Applicant.

Guideline H - Drug Involvement and Substance Misuse

The security concern relating to the guideline for Drug Involvement and Substance Misuse is set forth at 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 at AG ¶ 25 contains seven conditions that could raise a security concern and may be disqualifying. Two conditions are established:

(a) any substance misuse (see above definition); and

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

Appellant used cocaine in 2018~2019, while possessing a security clearance. He also used Adderall without a prescription. Therefore, AG ¶ 25 (a) and (f) are established.

The guideline at AG ¶ 26 contains four conditions that could mitigate security concerns. Two conditions may be 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; 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.

None of these apply. His cocaine involvement occurred while Applicant held a security clearance. He has submitted no such statement eschewing future drug involvement. Drug Involvement and Substance Misuse is found against Applicant.

Guideline J - Criminal Conduct

AG ¶ 30 sets forth the security concerns pertaining to criminal conduct:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

AG ¶ 31 describes two conditions that could raise a security concern and may be disqualifying in this case:

(a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

Applicant was convicted of a DIU in 2014. He also received an alcohol related Article 15 in 2009. The evidence establishes the above two disqualifying conditions.

AG ¶ 32 provides two conditions that could mitigate the above security concerns raised in this case:

(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; and

(d) there is evidence of successful rehabilitation; including but not limited to 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 community involvement.

Sufficient time passed, ten years, since Applicant's 2014 DUI. Criminal Conduct is found for 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept. I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant has not met his burden to mitigate the security concerns arising under the guidelines for financial considerations and drug involvement and substance misuse.

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 F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b~1.e:	For Applicant
Subparagraphs 1.f and g:	Against Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraphs 2.a. and 2.b :	Against Applicant
Paragraph 3, Guideline J:	FOR APPLICANT
Subparagraphs 3.a~3.c :	For 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 Applicant national security eligibility and a security clearance. National security eligibility is denied.

Richard A. Cefola
Administrative Judge