



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



In the matter of:)	
)	
)	ISCR Case No. 14-00202
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard A. Stevens, Esq., Department Counsel
For Applicant: *Pro se*

09/09/2014

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline E, personal conduct, and Guideline F, financial considerations. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On March 14, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline E, personal conduct, and Guideline F, financial considerations. The action was taken under Executive Order 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 within the DOD on September 1, 2006.

Applicant’s answer to the SOR was undated. The Government requested a hearing before an administrative judge. The case was assigned to me on July 15, 2014.

The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 24, 2014. I convened the hearing as scheduled on August 20, 2014. The Government offered exhibits (GE) 1 through 5, which were admitted into evidence without objection. Applicant testified on his own behalf. He did not offer any exhibits. DOHA received the hearing transcript (Tr.) on August 29, 2014.

Findings of Fact

Applicant admitted the allegations in ¶¶ 1.a-1.j, 2.a, and 2.b of the SOR. He denied ¶¶ 1.k-1.m, 2.c and 2.d of the SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 54 years old. He graduated from high school in 1980. He was married from 1987 to 1990. He was again married from 1991 to 1999. He has a 22-year-old son from that marriage.¹

Applicant enlisted in the Marine Corps in 1982 and served until 1986. He smoked marijuana before joining the Marine Corps. He smoked marijuana about ten times while in the Marine Corps. About two months before he was to complete his enlistment he tested positive for illegal use of marijuana. He was administratively separated from the Marine Corps with an Other than Honorable Discharge. Applicant stated he held a Top Secret security clearance while in the Marine Corps.²

In 1991, Applicant was found guilty of misdemeanor criminal damage as well as felony driving while intoxicated while his license was suspended or revoked. He was not sure why his license was suspended. He stated that he suspected his wife was being unfaithful to him, and he got upset and began drinking alcohol. He was at a bar, drank too much and left. He was in his vehicle when the police attempted to stop him, and he tried to elude them. He hit six or seven lighted construction road signs and a telephone pole. His blood alcohol level was .23%. He pled guilty to the charges, and he believes whatever jail sentence he received was suspended. He was ordered to attend an alcohol education class, which he completed. He was fined and ordered to pay for the damages to the property, which he did. He was placed on unsupervised probation.³

In October 1999, Applicant was found guilty of misdemeanor failure to comply with a court order. Applicant could not recall the specific circumstances of the charge, but believed he was required to pay a fine regarding a domestic violence incident. His wife had made accusations against him, and he denied them. He stated he intentionally did not pay the fine because he disagreed with the court order. He went to jail in

¹ Tr. 23.

² Tr. 9, 23-28.

³ Tr. 34-40.

October 1999 for 15 days for his failure to pay the fine. He admitted he and his wife were regular marijuana users and heavy alcohol users at the time.⁴

In May 2002, Applicant was again found guilty of failure to comply with a court order. Applicant stated this charge was for his continued refusal to pay the court-ordered fine for the domestic violence charge.⁵

In September 2002, Applicant was found guilty of driving while his license was suspended/revoked/cancelled. He does not recall all of the specifics of this offense. He recalls getting pulled over by the police and being charged with possession of marijuana. He was not driving his car, and the charge was later dropped.⁶

In October 2001, Applicant was charged with misdemeanor assault and intent to injure/reckless. In December 2002, Applicant was found guilty of misdemeanor assault-intent/reckless/injure. He indicated that he was charged for trying to hit his wife with his car. He denied he intentionally tried to hit her. She grabbed hold of his car door when he was leaving her residence. He was fined. It is unknown what additional sentence he may have received.⁷

In February 2004, Applicant was found guilty of misdemeanor driving with his license suspended for failure to appear/failure to produce, failure to use a seat belt, and failure to appear (2nd degree). Applicant believed the failure to appear charge was related to his failing to pay the fine associated with the December 2002 disposition of the assault offense. He refused to pay the fine imposed by the court.⁸

In January 2006, Applicant was found guilty of failing to produce evidence of financial responsibility and for having an expired registration.⁹

In July 2008, Applicant was found guilty of misdemeanor disorderly conduct-disturbance. Applicant stated he was falsely accused of assault by his girlfriend's ten-year-old son. She called the police. He has not yet paid the court-ordered fine.¹⁰

⁴ Tr. 40-46.

⁵ Tr. 46-47.

⁶ Tr. 51-52.

⁷ Tr. 48-51, 53-54; GE 5.

⁸ Tr. 53-57; GE 5.

⁹ Tr. 57-59.

¹⁰ Tr. 59-61.

In March 2009, Applicant was arrested and later found guilty of misdemeanor failure to comply with a court order. He believed it was because of his continued refusal to pay the fine from 2008. He admitted he was arrested, handcuffed, and went to jail.¹¹

Applicant explained that his decisions to not pay fines imposed by the court had nothing to do with being disrespectful to the court, but he explained he was not going to pay for something he did not do.¹²

On August 25, 2013, Applicant completed a SCA. In response to Section 22, which asked if he had been arrested in the past seven years, he responded “No.” Applicant failed to disclose his March 2009 arrest. Section 22 also asked in the past seven years if he had been charged, convicted, or sentenced of a crime in any court. He responded “No.” Applicant failed to disclose his March 2009 charge, conviction and sentence.¹³

Applicant also responded “No” in Section 22 where he was asked if he had ever been charged with an offense involving alcohol or drugs. He failed to disclose his July 1991 felony driving while intoxicated conviction. Although not alleged in the SOR, Applicant was arrested in January 2000 for marijuana possession and driving under the influence; in June 2002 he was arrested for marijuana possession/use; and in December 2004 he was arrested for dangerous drug-possession/use, and drug paraphernalia–possession/use.¹⁴ Applicant testified he believed he only had to report information dating back seven years so he did not list this information. Applicant’s testimony was not credible because he did not include the March 2009 offense under Section 22, which was within the seven years.¹⁵

Applicant admitted in his answer to the SOR that he owes back child support that is alleged in SOR ¶¶ 2.a (\$10,025) and 2.b (\$43,827). He indicated that he is working with his ex-wife to resolve the arrearage and has paid \$30,000. He testified that he decided to stop paying child support because he believed his ex-wife was addicted to drugs. He did not pay child support for three years after they divorced. He maintained contact with his son. His income tax refunds have been involuntarily withheld to pay his delinquent child support. He does not know how much his tax refunds have paid toward his delinquent child support. He estimated his annual gross income is approximately \$20,000. He failed to provide any supporting proof as to the amount he paid on the delinquent child support.¹⁶

¹¹ Tr. 62.

¹² Tr. 63.

¹³ Tr. 64-71.

¹⁴ GE 4, 5.

¹⁵ Tr. 21-22, 64-71.

¹⁶ Tr. 73-79; Answer to the SOR.

Before 2006, Applicant worked a pipeline job, and he stated he made some child support payments through garnishment and tax refunds that were withheld. Applicant testified that from 2007 to 2010, he was voluntarily unemployed because his girlfriend did not want him to work. She was sufficiently wealthy to pay their bills, so Applicant did not work and did not pay child support. He indicated that he received unemployment benefits. When asked if he was looking for a job, he stated his girlfriend did not want him to work, but towards the end of 2010 he began to look for work.¹⁷

Applicant disputes the debts in SOR ¶ 2.c (\$771, a medical debt) and ¶ 2.d (\$484, a municipal court debt¹⁸). Applicant denied he owed them. They are listed on his credit report. During his background investigation he acknowledged the debt in SOR ¶ 1.c, but believed it was paid. He intended to contact the creditor and resolve the debt. He also believed the debt in SOR ¶ 1.d was paid. He intended to contact the creditor to resolve the debt. At his hearing, Applicant indicated the debts belonged to a different person with the same name and he never was in the location where he believed the debts were incurred. He did not provide information as to what he has done to remove the accounts from his credit report or dispute them.¹⁹

Applicant testified he has not used marijuana since about 2002 or 2003. He stated he has not consumed alcohol in two years. He attends church and associates with a better crowd.²⁰

Policies

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 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, these guidelines are applied 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(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.

¹⁷ Tr. 81-87.

¹⁸ SOR ¶ 2.d alleges the amount of the debt is \$771. GE 3 lists the amount as \$484.

¹⁹ Tr. 21; GE 3.

²⁰ Tr. 29-34.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of 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 not drawn 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 to obtain 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 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 Executive Order 10865 provides that 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 F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and the following two are potentially applicable:

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

Applicant has four delinquent debts that total more than \$55,000, the largest two being delinquent child support. He decided not to pay his child support for three years. Applicant was unwilling and unable to satisfy his debts. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated 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 did not pay his child support for three years. He stated in his answer to the SOR that he has repaid almost \$30,000 toward the arrearages, but failed to provide proof to substantiate his claim. He indicated his income tax refunds are withheld to pay the debt. AG ¶ 20(a) is not established because he has not resolved any of his delinquent debts. I am not convinced that his behavior is unlikely to recur. I find his conduct casts doubt on his current reliability, trustworthiness, and good judgment.

The conditions that caused Applicant's financial difficulties were not beyond his control. He chose not to pay his child support and have it remain delinquent for years. He did not work for almost three years because his girlfriend did not want him to, yet he collected unemployment benefits. He has not made a good-faith effort to resolve his

debts. He did not provide any documented information to show what actions he has taken to dispute two debts. AG ¶¶ 20(b), 20(c), 20(d), and 20(e) do not apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct;

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. I find the following 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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

(d) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing.

Applicant deliberately failed to disclose on his SCA his March 2009 arrest and charges, and other alcohol and drug-related charges. Applicant has a long history of criminal arrests and convictions dating from 1986 to 2009. He was separated from the Marine Corps with an Other than Honorable Discharge due to his illegal use of marijuana while on active duty. He consciously defied a court order to pay a fine because he disagreed with the court's findings. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

- (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 improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. 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 caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

I have considered all of the mitigating conditions and conclude none apply. Applicant has a history of breaking the law. Even after he went to court and was sentenced, he failed on numerous occasions to comply with the court's order and refused to pay his fine. He admitted his actions were intentional because he did not agree with the judge's findings. Applicant's offenses are not minor nor were his actions infrequent. Although he stated he has changed, it does not negate his long history of inappropriate conduct. He did not promptly make a good-faith effort to correct his omissions. His omissions are not minor, but rather are serious. There is no evidence to suggest that there were unique circumstances surrounding his omissions. His past actions cast doubt on his reliability, trustworthiness, and good judgment. None of the above mitigating conditions apply.

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(a):

(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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines E and F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is 54 years old. He has a long history of breaking the law, beginning in 1986 when he received an Other than Honorable Discharge for using marijuana. He repeatedly violated the law and defied the court's orders when he refused to pay fines. He intentionally did not pay his child support. He has not resolved his delinquent debts. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the personal conduct and financial considerations guidelines.

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-1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.d	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 Applicant a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge