



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



In the matter of:)
)
) ISCR Case No. 12-06607
)
Applicant for Security Clearance)

Appearances

For Government: Fahryn Hoffman, Esq., Department Counsel
For Applicant: *Pro se*

03/12/2013

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On October 17, 2012, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines G, F, and E. 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 answered the SOR on December 5, 2012, and requested a hearing before an administrative judge. The case was assigned to me January 3, 2013. The

Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 17, 2013. I convened the hearing as scheduled on February 7, 2013. The Government offered Exhibits (GE) 1 through 8, which were admitted into the record without objection. Applicant testified on his own behalf. He offered Exhibits (AE) A through C, which were admitted into the record without objection. The record was held open until February 14, 2013, to allow Applicant to submit additional documents. He timely submitted AE D through G, which were admitted into the record without objection.¹ DOHA received the hearing transcript (Tr.) on February 19, 2013.

Findings of Fact

Applicant admitted the allegations in SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 30 years old. He is a high school graduate and has attended technical training. He is not married and has no children. He served in the U.S. Marine Corps from 2001 to 2005, attained the rank of sergeant (E-5), and was honorably discharged. He served a seven-month tour in Kuwait and a 13-month combat tour in Iraq. Applicant has had a secret security clearance since approximately 2001 or 2002. He has not always been working in jobs that required a clearance so he was unaware that his clearance was still active.²

Applicant admitted using marijuana approximately once in 2001, 2005, and 2006. He used hallucinogenic mushrooms approximately once in 2007. He used Ecstasy approximately three times in 2005. He used cocaine approximately two times between 2005 and 2007, and he used Vicodin, without a prescription, approximately four times between 2005 and 2007. He explained he had a security clearance when he used the illegal drugs, but he was not working for the Government at the time.³

Applicant testified that he used the drugs at parties when someone offered him the drugs. He knew the person and was always curious to see what the effects were so he used them. He stated it was not something he did regularly. "It was just every now and then it had come across my path and I had tried it."⁴

Applicant failed to disclose his illegal drug use on his December 29, 2011, Electronic Questionnaires for Investigations Processing (e-QIP). The questionnaire specifically asked under Section 23, if in the past seven years, he had illegally used any drugs or controlled substances. He answered "no."⁵

¹ Department Counsel's memorandum is HE I.

² Tr. 18-20.

³ Tr. 62-63.

⁴ Tr. 64.

⁵ GE 1.

Applicant's explanation for failing to disclose the required information was that he did not know how to word his drug use, and he felt more comfortable waiting to tell an investigator instead of disclosing it on the e-QIP.⁶ He also stated that he intended to disclose his illegal drug use but did not.⁷ In his answer to the SOR he stated: "

I did initially list my prior experimentation with drugs on the [e-QIP] but had removed it before submitting it, not because I wanted to hide it, but because after I typed it up I realized how awful it looked with everything else that was listed. I [chose] to defer disclosure until I could speak to the investigator. I felt more comfortable waiting until I was interviewed to disclose it. I brought it to the investigator's attention as I felt it was in the best interest of myself and the U.S. Government if I gave full disclosure.

During Applicant's interview with an Office of Personnel Management investigator, Applicant stated he did not disclose his illegal drug use on his e-QIP because when he originally read the question, he was uncertain how to respond. He was confused by the question and was not certain if experimental use was applicable to the question. He further explained that because his use was experimental, he decided to originally answer the question "no" and then planned to discuss his experimental use with the investigator when he was interviewed. Applicant described his drug use as experimental. He was curious and wanted to try the drugs. He does not intend to use illegal drugs in the future.⁸

In April 2011 Applicant was charged with driving under the influence (DUI), operating a vehicle without insurance, license not carried/exhibited, and careless driving. Applicant was drinking alcohol and drove his car hitting a moped with two people on it. The people were injured, but not seriously. He had no injuries. The moped was totaled. His breathalyzer result was .22%. He did not have insurance because he had let it lapse. The victims are suing Applicant civilly.⁹

Applicant explained that he was out with friends and did not anticipate drinking as much as he did. He had a designated driver and had left his car with a valet service. He does not know why but he decided to drive after drinking. Applicant does not remember much of what happened.¹⁰

⁶ Tr. 58-63.

⁷ Tr. 64-65.

⁸ GE 3.

⁹ Tr. 29-31, 45.

¹⁰ Tr. 22-24, 83-87.

Applicant was convicted of DUI in October 2011. He was sentenced to 30 days in jail, which was suspended, placed on probation for 12 months, ordered to attend DUI class, complete 150 hours of community service within 10 months, fined \$1,500, and ordered to pay approximately \$10,000 in restitution to the accident victims. He was also ordered to abstain from alcohol consumption for six months and his license was revoked.¹¹ In his answer to the SOR, Applicant stated: "All of the requirements of my sentencing were completed and my probation was terminated early. I was not required to serve jail time." He further stated in his answer:

I made a personal decision to stop drinking after the accident, on my own, before I had ever attended either the court ordered classes or the evaluation for treatment. The experience had a strong emotional impact on me that had nothing to do with any embarrassment, financial hardship incurred, or enormous amount of time and energy spent both before and after my sentencing. I always made it a point not to drink and drive, I have had several awful experiences in [the] past where people that I was close to were killed because they had driven under the influence. Alcohol had never been a problem in my life before, and I had never considered that I would be one to drink so much that it would result in my being in a situation where I would even attempt to drive. It could have gotten someone else maimed or killed, let alone myself. The victims and I are unbelievably lucky that it did not happen.

When questioned at his hearing, Applicant admitted he did not stop drinking until February 2012, ten months after the accident, which was a violation of his probation. He resumed drinking in May 2012. He was required to abstain from consuming alcohol for six months beginning in October 2011, when he was sentenced. His license was revoked, and he admitted that he continued to drive with a revoked license to and from work. He admitted he has been driving for the past 11 months without a license. He stated he drives on a revoked license because he cannot afford to pay for insurance, an ignition lock, and the fees associated with reinstating his license. In addition, he admitted he failed to disclose his arrest to his facility security officer until about six months after the incident. Applicant stated he has not completed all of the requirements for the DUI program. As part of the program he was to complete an alcohol evaluation. He has had one appointment, but needs a minimum of three visits. He indicated he needed time to complete the appointments, and he has been busy working to obtain a steady income. He also stated he previously could not afford the \$50 fee, but can now. He stated he was released three weeks early from probation. When asked if the court was aware of his probation violations, he stated he was never asked.¹²

The SOR alleges in ¶ 1.a (\$210) a delinquent medical debt. Applicant paid the delinquent debt in June 2011. The debt in SOR ¶ 1.b (\$612) is a medical debt that was

¹¹ Tr. 24-29.

¹² Tr. 23-29, 34-36, 68-80.

paid in October 2012. The debt in SOR ¶ 1.c (\$134) is a medical debt that was paid in October 2012.¹³

Applicant attributed his financial problems to helping his family with loans when they had difficulties. His family failed to repay him the loans. He helped his stepfather who had medical needs. He also had a roommate who failed to pay his portion of the rent.¹⁴

A witness testified on behalf of Applicant. He helped Applicant get his job and at one time was his supervisor. He stated he has no reason to not trust Applicant, and Applicant has not tried to hide anything. He trusts him at work and would trust him with his life. He described Applicant as honest and forthcoming.¹⁵

Applicant provided copies of military awards and achievements. He provided character letters that describe him as a valuable employee. He is personally and professionally respected by leadership, his peers, and subordinates. He is an asset and integral part of the team. He is considered a model employee and can be counted on to complete the task. He is considered a responsible individual who is trustworthy, dependable, truthful, courteous, and an excellent decision maker.¹⁶

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.

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

¹³ Tr. 41-44; AE E, F, G.

¹⁴ Tr. 36-41.

¹⁵ Tr. 94-100.

¹⁶ Tr. 20; AE A.

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 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 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 them under AG ¶ 19, and the following are potentially applicable:

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

Applicant had debts that he failed to pay and they became delinquent. I find the above disqualifying conditions apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from those financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20, and the following are potentially applicable:

(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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant had difficulty paying his debts because he was helping his family by loaning them money. They failed to repay him. He helped his stepfather who had medical needs. He also had a roommate that refused to pay his portion of the rent. Applicant has paid the delinquent debts that are alleged in the SOR. I find AG ¶ 20(b) applies. It appears Applicant's financial problems are resolved and under control. I find AG ¶¶ 20 (c) and 20(d) apply.

Guideline G, Alcohol Consumption

AG ¶ 21 expresses the security concern for alcohol consumption:

Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

I have considered all of the disqualifying conditions under AG ¶ 22, and the following is potentially applicable:

(a) alcohol-related incidents away from work, such as driving under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

Appellant was convicted of DUI in October 2011. While driving drunk he hit a moped and caused injuries. I find the above disqualifying condition applies.

I have considered all of the mitigating conditions under AG ¶ 23, and the following are potentially applicable:

(a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual 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 alcoholism or issues of alcohol abuse, provides evidence of actions take to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if alcohol abuser).

Applicant had a serious alcohol-related incident. As part of his probation he was required to abstain from alcohol consumption for six months from the date of his sentence. His answer to the SOR was misleading, stating he voluntarily abstained from drinking alcohol. He continued to drink alcohol in violation of his sentence, and it was not until approximately five months after he was ordered to abstain, did he comply.

Applicant had his license revoked, but continued to drive, justifying his actions. He still drives in violation of the revocation. Applicant was required as part of his sentence to complete a DUI program. As part of that program, he was to have an alcohol assessment. He has attended only one of the three required appointments for his assessment. He testified he was released from probation early, but he did not disclose to the probation officer his violations. His testimony was not credible. Applicant continues to consume alcohol. Applicant's actions raise questions about his credibility and his ability to comply with rules and regulations. Insufficient time has passed since Applicant's serious alcohol-related incident. There is insufficient evidence to conclude that his behavior is unlikely to recur and that he has resolved any issues he may have with alcohol. He failed to comply with the terms of his probation. I find the above mitigating conditions do not apply.

Guideline E, Personal Conduct

AG ¶ 15 sets out the security concern relating to 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 have specifically considered the following:

(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.

Applicant had a duty to disclose information about his drug use on his e-QIP. He deliberately chose not to comply with the e-QIP requirements and withheld the information. The above disqualifying condition applies.

AG ¶ 17 describes conditions that could mitigate personal conduct security concerns. The following are potentially applicable:

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

(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.

I find Applicant's failure to disclose information was intentional and deliberate. His eventual disclosure on his terms is not the standard. His actions are not minor, and I am not convinced they are unlikely to recur. I find his actions cast doubt on his reliability, trustworthiness, and good judgment. The above mitigating conditions do not 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 the 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 F, G, and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant served in the Marine Corps and was honorably discharged. He is a valued team member to his employer. He had some financial difficulties that he resolved. He was involved in a serious alcohol-related incident, and was in violation of certain provisions of his probation. He did not complete an alcohol assessment that was required. Insufficient time and evidence was provided to conclude it is unlikely alcohol will be a recurring problem. Applicant's failure to be honest on his e-QIP is also a serious concern. I considered all of Applicant's testimony and found that he was not completely honest about information he provided, and he provided misleading statements and testimony. In his answer to the SOR, he claimed he voluntarily stopped drinking after the accident. At his hearing, he admitted he was required to abstain from alcohol consumption for six months, but he did not comply with the requirement. His license is revoked, but he continues to drive without a license. I have not considered these issues for disqualifying purposes, but have considered them when analyzing the whole person and when making a credibility determination. Along with his failure to be honest on his e-QIP, he provided misleading information which shows a pattern of dishonesty and deception. Overall, the record evidence leaves me with serious questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the guideline for financial considerations, but failed to mitigate the alcohol consumption and personal conduct 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 G:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraphs 1.a-1.d:	For Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant

Conclusion

In light of all of the circumstances 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