



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 12-10358
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

01/14/2014

Decision

MALONE, Matthew E., Administrative Judge:

Allegations of criminal conduct are resolved for Applicant. However, Applicant failed to mitigate the security concerns about his finances and personal conduct. He repeatedly and deliberately misrepresented adverse information in his background, and he has accrued significant delinquent debt that he has not attempted to resolve. Clearance is denied.

Statement of the Case

On June 6, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for his employment with a defense contractor. The results of the ensuing background investigation, which included his responses to interrogatories from Department of Defense (DOD) adjudicators, did not support a finding that it is clearly consistent with

the national interest to grant Applicant's request for access to classified information.¹ On May 17, 2013, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the adjudicative guidelines² for criminal conduct (Guideline J), personal conduct (Guideline E), and financial considerations (Guideline F).

Applicant timely responded to the SOR (Answer) and requested a hearing. The case was assigned to me on October 23, 2013, and I convened a hearing on November 19, 2013. Department Counsel presented Government Exhibits (Gx.) 1 - 6, which were admitted without objection. (Tr. 19 - 25) Applicant testified but offered no documents. DOHA received the transcript of hearing (Tr.) on November 27, 2013.

Findings of Fact

Under Guideline J, the Government alleged that on October 14, 2009, Applicant was arrested and charged with possession of marijuana, to which he pleaded guilty and was fined \$1,000 (SOR 1.a); and that on November 19, 2011, he was arrested and charged with domestic battery (SOR 1.b). Applicant admitted both allegations.

Under Guideline E, the Government alleged that during a July 31, 2012 interview with a Government investigator, Applicant deliberately falsified details of the drug-related arrest described in SOR 1.a (SOR 2.a); that by answering "No" to e-QIP question 23 regarding illegal use of drugs in the last seven years, he deliberately made a false statement to the Government (SOR 2.b); that by answering "No" to e-QIP question 23 regarding illegal purchase, sale, possession, or trafficking of drugs in the last seven years, he deliberately made a false statement to the Government (SOR 2.c); and that by answering "No" to question 22.a regarding arrests in the last seven years, he deliberately made a false official statement to the Government because he omitted the domestic battery arrest described in SOR 1.b (SOR 2.d). Applicant admitted each of these allegations.³

At hearing, I asked Applicant if he understood the gravamen of each Guideline E allegation to which he had admitted; namely, that he intentionally provided false statements to the Government in his e-QIP and in his interview. He indicated that he understood that he had provided incorrect information in his answers and at the interview, but he denied doing so intentionally. Accordingly, I entered denials on his

¹ Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

² The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006).

³ SOR 2.b - 2.d alleged that Applicant executed his e-QIP on May 31, 2012. However, he actually signed and submitted the document on June 6, 2012. At hearing, I amended SOR 2.b - 2.d to reflect the latter date. (Tr. 24 - 26)

behalf as to SOR 2.a - 2.d (Tr. 11 - 13), and the burden of proving those controverted allegations remained with the Government.⁴

Under Guideline F, the Government alleged that Applicant owed \$18,802 for 20 delinquent or past-due debts (SOR 3.a - 3.t). Applicant admitted all of these allegations. In addition to his admissions, I make the following findings of fact.

Applicant is 26 years old. He has never been married, but has one child, age two, whom he supports through weekly child support payments of \$123. (Tr. 53)

After graduating from high school in 2006, Applicant attended a 14-month training program for certification in various aviation industry maintenance and repair skills. After a brief period working as a dishwasher, Applicant applied for work with a large aviation manufacturing and maintenance corporation. He was not hired because he disclosed his 2009 arrest for marijuana possession (more fully discussed, below) when he applied. In 2010, Applicant was hired as an aviation maintenance technician by a non-defense industry contractor, where he worked until February 2011. In April 2012, Applicant was offered a position with the defense contractor sponsoring his application for a security clearance, but the job is contingent on his obtaining eligibility for that clearance. Since April 2011, he has been working for a different aviation company while his clearance application is pending. (Gx. 1; Tr. 45)

Applicant disclosed several delinquent and past-due debts in his e-QIP. Credit reports obtained during his background investigation reflect the debts alleged in SOR 3.a - 3.t. Applicant financed his vocational education through a combination of grants and student loans. The total cost of his education was about \$21,000. Of that, he received about \$9,000 in grants. The remaining student loans came due, after a brief grace period, in early 2011. However, Applicant has not yet been able to make any payments on his student loans. Applicant began, but did not complete, the process of consolidating his student loans into a single account in 2011. As alleged in SOR 3.j - 3.l, and 3.o - 3.s, Applicant's student loans are either in collection or more than 120 days past due. (Gx. 1; Gx. 2; Gx. 5; Gx. 6; Tr. 42 - 43, 64 - 65, 68 - 70)

Applicant also has been working without medical insurance since at least 2010. As a result, he incurred several unpaid debts for medical services. Those debts, now delinquent as alleged at SOR 1.a - 1.c, 1.e - 1.h, and 1.t, total almost \$2,000. They remain unpaid. (Gx. 1; Gx. 2; Gx. 5; Gx. 6; Tr. 58 - 61)

Applicant's current position pays \$23.50 hourly. However, he often travels and must pay all of his own expenses, including medical or other insurance costs. Applicant also pays weekly child support of \$123, and he is helping support his parents, because his father is physically unable to work and his mother earns less than \$20,000 annually.

⁴ See Directive E3.1.14.

As a result, he has very little money remaining each month after expenses with which to repay his student loans and other debts. (Tr. 39 - 40, 54 - 57, 102)

When Applicant applied for a security clearance, he disclosed most of his past-due debts, including medical bills, delinquent student loans, and at least three unpaid personal credit accounts. Credit reports obtained during the ensuing background investigation documented the debts alleged in SOR 3.a - 3.t. Applicant has not entered into any repayment plans or otherwise acted to resolve his financial problems. He also has not sought professional financial counseling or other assistance in trying to resolve his debts. Applicant plans to start paying his debts when he starts working for the defense contractor that has sponsored his application. That job will pay about \$63,000 gross annually, and will provide medical insurance and other benefits, as well as travel expense reimbursement. (Gx. 1; Gx. 5; Gx. 6; Tr. 101 - 102)

In Applicant's e-QIP, he disclosed that he was charged with possession of marijuana on October 14, 2009. He stated in his answer to e-QIP question 22 (Police Record) that he was in a car with someone who had marijuana, but who did not want to admit it was theirs. When Applicant was asked about his arrest during a July 31, 2012 background investigation interview with a Government investigator, he stated that the possession charge arose when marijuana was found during a traffic stop of a car in which he was a passenger. Applicant further stated that his friend, the driver, was on probation, so Applicant told police the marijuana was his to spare his friend another arrest. In response to interrogatories from DOD adjudicators, Applicant reviewed the summary of his interview, agreed that it was accurate, and adopted it as his own statement. (Gx. 1; Gx. 2)

However, the police report of Applicant's arrest differs significantly from Applicant's version. According to the report, part of which Applicant provided in response to DOD interrogatories, the arresting officer stopped Applicant, who was walking away from a house at which police had arrived to execute a search warrant because it was a suspected point of sale for illegal drugs. Applicant was found in possession of two small bags of marijuana on his person – one in his shirt and one in his shoe. He admitted to the officer that he had just purchased the marijuana. Applicant was cited for misdemeanor possession and released. On November 10, 2009, he appeared in court and was assessed a \$500 fine plus court costs. (Gx. 1; Gx. 2; Gx. 4)

At his hearing in this matter, Applicant was evasive about the details of his October 2009 drug possession charge. He initially stated that he was arrested "at a house known as a drug house." On cross-examination, he again admitted being on the property, which he characterized as a house where on-line gamers gathered for competitions, when police arrived to execute a search warrant. His testimony indicated that he was not in a car, as he had stated in his e-QIP and in his July 2012 interview. However, he denied that he told police he had "just purchased" drugs, as reflected in the police report. He also claimed that the account he gave in his July 2012 interview was true because he had been in a car with his friend, and because he was holding the two bags of marijuana for that friend. However, he was not holding them to protect his

friend, but because his friend was selling marijuana and Applicant was helping him, as he had on two previous occasions. Applicant also averred, alternatively, that the police report of his arrest was inaccurate, or that he had told the arresting officer he had just purchased the marijuana because he thought that is what the officer wanted to hear. (Gx. 2; Tr. 37, 79 - 89) I found Applicant's testimony about his drug possession arrest to be completely lacking in credibility.

When Applicant submitted his e-QIP, he answered "no" to question 23 regarding use of illegal drugs in the last seven years. However, in response to interrogatories from DOD adjudicators, Applicant stated that he used marijuana once in 2011. In his testimony, he rationalized the omission of his drug use from the e-QIP by explaining that he did not consider a one-time use of marijuana to be within the scope of e-QIP question 23. (Gx. 1; Gx. 2; Tr. 90 - 92) I did not find his testimony about his omission to be credible.

On November 19, 2011, Applicant and his girlfriend, the mother of his child, got into an argument that escalated to the point that the police were called. No physical contact was made by either party during the argument. Applicant left the premises before the police arrived, and he later turned himself in at the police station on a charge of domestic battery. After having his picture and fingerprints taken and spending the night in jail, Applicant appeared in court the next morning. All charges were dropped at the request of his girlfriend, and Applicant later completed an anger management class. Applicant did not disclose the arrest as required by e-QIP question 22, because he thought the question only addressed convictions or "going to jail." However, he did not explain why he disclosed his 2009 citation for marijuana possession, for which he did not go to jail, but failed to report his 2011 arrest for battery, for which he was jailed overnight. (Gx. 1; Gx. 2; Tr. 39, 90 - 91, 102, 105)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁵ and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the "whole-person" concept, those factors are:

- (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

⁵ See Directive. 6.3.

for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁶ for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.⁷

A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.⁸

Analysis

Financial Considerations

Since 2009, Applicant has accrued significant unpaid debt consisting mostly of unpaid medical bills and unpaid or past-due student loans. He has not made any payments on those debts, or on other delinquent personal credit accounts. This information is sufficient to raise a security concern about Applicant's finances. That concern is expressed, in relevant part, at AG ¶ 18 as follows:

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

⁶ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁷ See *Egan*, 484 U.S. at 528, 531.

⁸ See *Egan*; AG ¶ 2(b).

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.

More specifically, available information requires application of the disqualifying conditions at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c) (*a history of not meeting financial obligations*).

Applicant's debts are still not being addressed in any meaningful way, and he does not currently have the means to pay his debts. His income is earned from a company that does not reimburse his travel expenses or provide medical insurance. Most of Applicant's money is used to support his child and his parents. He started the process of consolidating his student loans into a single payment in 2011, but he never submitted the application. Applicant has not sought financial counseling or other assistance in resolving his debts, and he does not contest the validity of any of the debts alleged. Available information does not support any of the AG ¶ 20 mitigating conditions, and this guideline is resolved against the Applicant.

Personal Conduct

Available information shows that Applicant repeatedly provided false information to the Government in his e-QIP and in his background interview. Such conduct is disqualifying if done intentionally. I conclude from all of the facts and circumstances presented that Applicant knowingly and willfully falsified or withheld relevant information required by the Government to accurately assess his suitability for access to classified information. His conduct raises a security concern about Applicant's personal conduct addressed at AG ¶ 15 as follows:

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.

More specifically, the following AG ¶ 16 disqualifying conditions apply:

(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; and

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

Applicant's version of what happened in his 2009 drug-related arrest differs significantly from what he disclosed in his e-QIP, from what he told a Government investigator during his background investigation, and from his testimony in this hearing. After being denied employment in 2010 because he disclosed that arrest in a job application, Applicant decided that he should conceal the true scope of his actions by claiming the drugs were not his and by trying to disassociate himself from the house police had identified as a source of illegal drug activity.

Applicant also did not disclose his use of marijuana in 2011. When asked at the hearing why he omitted that information, he provided a convoluted explanation about what he considered to be "use" of an illegal drug. His rationalization for his omission did not persuade me that it was appropriate for him to withhold that information from the Government.

Finally, Applicant was obligated to disclose his 2011 domestic battery arrest even though the charge was dismissed the next day. Applicant's own explanation that he thought he only had to disclose instances involving incarceration is directly at odds with his own account of what happened; that is, that he spent the night in jail before the charge was dismissed. By itself, this omission might be considered a misunderstanding of the question asked. However, when taken together with Applicant's other falsifications, the record as a whole reflects a pattern of deliberate falsification intended to protect his own interests at the expense of the Government's need for sufficient accurate information in assessing his suitability for access to classified information.

I have considered the AG ¶ 17 mitigating conditions and conclude that none apply. There is no record of any prompt, good-faith attempt to correct his falsifications. Instead, Applicant's testimony, which included further attempts to skew the information about his arrest in 2009, was inconsistent with the other evidence presented and was simply not credible. Nor can his conduct in this regard be considered minor. The Government has a substantial and compelling interest in obtaining accurate information about Applicant's background, his judgment, and his candor. Applicant's deliberate failure to provide candid and complete answers to questions asked, in order to protect his own interests, completely undermines any confidence that he will protect the national interest as required. His falsifications are multiple, recent, and reflect adversely on his trustworthiness and reliability. The security concerns under this guideline remain unresolved.

Criminal Conduct

Applicant's arrest for marijuana possession constitutes criminal conduct which raises a security concern, stated at AG 30, as follows:

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.

However, his domestic battery charge in November 2011 was dismissed less than 24 hours after Applicant turned himself in. Available information is not sufficient to show that Applicant actually struck, threatened, or tried to harm his girlfriend. That event was likely the result of two young parents and their inexperience getting the better of them.

Nonetheless, Applicant's drug-related arrest requires application of the disqualifying conditions at AG ¶ 31(a) (*a single serious crime or multiple lesser offenses*) and AG ¶ 31(c) (*allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted*). By contrast, the mitigating condition at 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 or does not cast doubt on the individual's reliability, trustworthiness, or good judgment*) also is supported by the record.

Applicant was arrested when he was 21, but before he attended an aviation vocational institute, and before he embarked on his career in the aviation industry. Despite the other issues of concern raised by this record, I am confident Applicant is unlikely to engage in criminal conduct in the future.

Whole-Person Concept

I have evaluated the facts and have applied the appropriate adjudicative factors under Guidelines E, F, and J. I also have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is 26 years old and presumed to be a mature, responsible adult. In many respects, he is leading a lifestyle that supports such a presumption. He has learned a trade and started a career in aviation maintenance and repair. He is supporting his child, and he is helping his parents because his father is unable to work. Unfortunately, Applicant has financial problems that continue to place him at risk of improper conduct to pay his debts. As shown by his failure to consolidate his student loans, he has not demonstrated initiative and good judgment in trying to resolve his financial challenges. Finally, Applicant deliberately and repeatedly attempted to obfuscate details about his past conduct, particularly his drug use and arrest. His lack of candor indicates his willingness to place his own interests ahead of the Government's. Such a fundamental flaw in judgment and trustworthiness sustains doubts about his suitability for access to classified information. Because protection of the national interest is the principal goal of these adjudications, those doubts must be resolved against the Applicant.

Formal Findings

Formal findings 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 J:	FOR APPLICANT
Subparagraphs 1.a - 1.b:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a - 2.d:	Against Applicant
Paragraph 3, Guideline F:	AGAINST APPLICANT
Subparagraphs 3.a - 3.t:	Against Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

MATTHEW E. MALONE
Administrative Judge