



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



In the matter of:)
)
) ISCR Case No. 13-01143
)
Applicant for Security Clearance)

Appearances

For Government: Christopher Morin, Esq., Department Counsel
For Applicant: *Pro se*

04/11/2014

Decision

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate the security concerns arising under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

On November 19, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F and E. This action was taken under Executive Order (EO) 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) implemented on September 1, 2006.

On December 16, 2013, Applicant answered the SOR and requested a hearing. The case was assigned to me on February 3, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 19, 2014, and the hearing was convened as scheduled on March 10, 2014. At the hearing, Department Counsel

offered Government's Exhibits (GE) 1 through 9 that were admitted into evidence without objection. Applicant testified and offered Applicant's Exhibit (AE) A that was admitted into evidence without objection. The record was left open until March 17, 2014, to provide Applicant an opportunity to submit additional matters. He timely submitted additional documents that were marked as AE B and C and admitted into evidence without objection. The prehearing guidance sent to Applicant was marked as Hearing Exhibit (HE) 1. Department Counsel's list of exhibits was marked as HE 2. DOHA received the hearing transcript (Tr.) on March 26, 2014.

Procedural Matters

At the hearing, Department Counsel made a motion to amend the amount in SOR ¶ 1.1 to reflect \$7,989 instead of \$14,347.19, and amend the amount in SOR ¶ 1.m to reflect \$6,154 instead of \$11,050.46. Applicant had no objections to the proposed amendments. Department Counsel's motion to amend the SOR was granted.¹

Findings of Fact

Background Information

Applicant is a 32-year-old aircraft mechanic who works for a defense contractor. He has been working for his current employer since April 2013. He graduated from high school in 2000 and recently started attending college. He served on active duty in the U.S. Marine Corps from August 2000 to August 2005, attained the grade of corporal (E-4), and received an honorable discharge. He married in 2004, separated in 2012, and reunited with his wife in 2013. He has two children, ages six and eight. This is the first time that he has sought to obtain a security clearance.²

Under Guideline F, the amended SOR alleged that Applicant had 25 delinquent debts, totaling \$30,319 (SOR ¶¶ 1.a – 1.y). Under Guideline E, the SOR alleged that he was arrested for uttering a fraudulent check under \$500 in 2009 (SOR ¶ 2.a); that he falsified his Electronic Questionnaire for Investigations Processing (e-QIP) dated April 17, 2013, by failing to disclose that fraudulent check arrest (SOR 2.b); that he was charged with simple possession of marijuana in 1999 (SOR ¶ 2.c); that he was arrested and charged with driving under the influence (DUI), drunkenness, and underage consumption in 2001 (SOR ¶ 2.d); that he was arrested and charged with driving while impaired (DWI), expired registration, no insurance, and open container in 2002 (SOR ¶ 2.e); and that he falsified his e-QIP by failing to disclose the alcohol and drug charges noted above (SOR ¶ 2.f). In his Answer to the SOR, he admitted all of the Guideline F allegations. He admitted the allegations pertaining to the arrests in 1999, 2001, and

¹ Tr. at 9-10.

² Tr. at 4-6, 20-24, 47-50; GE1; AE C. Applicant testified that his final rank was sergeant (E-5). See Tr. 21.

2009, denied the allegation regarding the arrest in 2002, and did not respond to the two falsification allegations. His admissions are incorporated as findings of fact.³

Financial Considerations

Upon his discharge from the Marine Corps, Applicant worked for a company as a machinist from August 2005 to October 2012. In 2009, he was laid off that job for about a month. He eventually left that job because work slowed down and additional layoffs were imminent. He then worked for another company as a machinist until April 2013 before starting his current job.⁴

Applicant attributed his financial problems to bad money management. He indicated he had no excuse for those problems. Once he incurred the delinquent debts, he did not have extra money available to resolve them. He provided no proof of payments toward any of the alleged debts and has not contacted the creditors to inquire about possible repayment arrangements.⁵

Applicant has not received financial counseling. On September 5, 2013, he submitted a Personal Financial Statement (PFS) that reflected his total net monthly income was \$2,544, that his total monthly expenses were \$2,317, and that his total monthly debt payments were zero, which left him a net monthly remainder of \$227. He listed no assets. Since filing the PFS, he has started college and receives about \$715 a month in GI Bill benefits. He testified that he had about \$500 in a savings account and \$4,200 in a retirement account. He was expecting to receive a tax refund for 2013 and indicated that he would use that money to pay debts. However, he also stated that he was recently notified that the Internal Revenue Service (IRS) was auditing him because of a 401(k) withdrawal he made in 2012 while he was unemployed. He thought the IRS was seeking about \$2,600 for that 401(k) withdrawal.⁶

Personal Conduct

In 1999, Applicant was arrested for possession of marijuana when he was 17 years old. He was convicted of that offense, fined, and spent 24 hours in jail. Because of that offense, he was expelled from high school and had to repeat his senior year. During an Office of Personnel Management (OPM) interview, Applicant did not bring up this conviction until confronted by the investigator about it. In that interview, he also stated that he used marijuana about 20 times when he was 16 or 17 years old and had not used it since then.⁷

³ Applicant's Answer to the SOR.

⁴ Tr. at 21-24, 34-35; GE 1.

⁵ Tr. at 21-27, 35-36, 52; GE 1, 2, 3, 4.

⁶ Tr. at 27-36, 52; GE 2.

⁷ Tr. at 42-44; GE 2, 5, 6.

While serving in the Marine Corps in 2001, he was arrested for an on-base DUI and drunkenness. During that incident, his blood alcohol content was .11 percent. He was taken into custody and released to a senior noncommissioned officer. For the DUI offense, he was awarded nonjudicial punishment (45 days restriction, 45 days extra duty, and a forfeiture of half a month's pay for two months) and lost his on-base driving privileges for a period.⁸

In 2002, Applicant was arrested by civilian authorities for DWI, expired state registration, operating a vehicle with no insurance, and possessing an open container of alcohol. Before his arrest, he was kicked out of a nightclub and the bouncer would not let him back in to contact his designated driver. As he moved a car in the parking lot, he was arrested. He had a blood alcohol level of .17 percent. He pled guilty to the DWI offense and was fined. He also had his driving privileges suspended and was required to attend alcohol classes. In his Answer to the SOR, he denied this offense stating, "I have only one DUI on my record. I was arrested in 2001 but did not go to court until 2002 because my case was postponed due to me deploying overseas."⁹

In Section 22 of the e-QIP, Applicant responded "No" to the question that asked whether he ever been charged with an offense involving alcohol or drugs. He testified that he thought he only had to report any offenses that occurred in the past ten years and indicated he misread the question.¹⁰

In 2009, Applicant was arrested for uttering a fraudulent check under \$500. He testified that his wife bounced the check and did not tell him about it. He learned of the bounced check when his cousin, who worked in the local sheriff's office, told him that a bond was issued for his arrest. He testified that his cousin drove him to the police station in the back of a patrol car. In responding to interrogatories, he stated, "I drove there in my own vehicle." At the police station, he was booked and released. He later appeared before a judge, was convicted of that offense, and paid a fine that included restitution for the bounced check. During the OPM interview, he did not bring up this conviction until confronted by the investigator about it. He testified that, when he was filling out his e-QIP, he simply forgot about this arrest and indicated that omission was not intentional.¹¹

Character Evidence

Applicant's supervisor wrote a letter indicating that Applicant was an outstanding member of the team. He noted that Applicant is punctual and was well respected. Applicant has been promoted since being hired there about a year ago. In the Marine Corps, Applicant was awarded the Good Conduct Medal, Global War on Terrorism

⁸ Tr. at 42-44; GE 2, 7.

⁹ Tr. at 44-47; GE 2, 8, 9; Applicant's Answer to the SOR.

¹⁰ Tr. at 45-47, 50-52; GE 2.

¹¹ Tr. at 36-42, 50-52; GE 5, 6.

Service Medal, Global War on Terrorism Expeditionary Medal, Humanitarian Service Medal, Sea Service Deployment Ribbon, Defense Service Medal, Navy Unit Commendation, Meritorious Mast, and Rifle Sharpshooter Badge.¹²

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 that are to be 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, 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(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 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the 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." The applicant has the ultimate burden of persuasion to obtain a favorable 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 about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the

¹² Tr. at 21, 47-48; AE C.

applicant concerned.” See also Executive Order 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 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 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 under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant accumulated numerous delinquent debts that he was unable or unwilling to satisfy over an extended period. This evidence is sufficient to raise the above disqualifying conditions.

Several Financial Considerations 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; and

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

Applicant attributed his delinquent debts to poor money management and provided little evidence to mitigate the security concerns arising from those debts. He has not recently contacted the creditors in an attempt to resolve these debts. No proof of payments or repayment arrangements was submitted. His financial problems are ongoing and continue to cast doubt on his current reliability, trustworthiness, and good judgment. None of the mitigating conditions apply.

Guideline E, Personal Conduct

The security concern for Personal Conduct is set out in 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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is 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;

(c) 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 possessed marijuana when he was 17 years old. As a young enlisted Marine, he had two alcohol-related driving offenses. In 2009, he was convicted of uttering a fraudulent check under \$500. AG ¶¶ 16(c) and 16(e) apply to those offenses.

Applicant responded “No” to both questions in Section 22 of an e-QIP that asked about his police record. Regarding the alleged falsifications, it merits noting that his inconsistent statements about his criminal conduct raised questions about his credibility. For example, he claimed in his Answer to the SOR that he only had one DUI on his record, while the evidence clearly established that he was punished for an on-base drunk driving offense in 2001 and was punished for an off-base drunk driving offense in 2002. Additionally, he stated in his response to the interrogatories that he drove himself to the police station during his 2009 fraudulent check arrest, but then testified that his cousin drove him to the police station in back of a patrol car. He claimed that he did not report his alcohol or drug offenses on the e-QIP, because he misread the applicable question and thought he was only required to report offenses that occurred in the past ten years. The wording of the applicable question in Section 22, however, is unambiguous. This e-QIP section clearly differentiated between law enforcement events that must be reported if they occurred in the past seven years and those that must be reported if they “**EVER**” occurred, with alcohol and drug charges falling in the latter category. Furthermore, Applicant claimed that he failed to report his 2009 fraudulent check conviction because he forgot about that incident. I did not find his explanations for his e-QIP omissions to be believable. Sufficient evidence was presented to establish that Applicant falsified his responses to questions in Section 22 by deliberately failing to disclose information about his criminal record. AG ¶¶ 16(a) and 16(e) applies to SOR ¶¶ 2.b and 2.f.

AG ¶ 17 lists several Personal Conduct mitigating conditions that are potentially applicable:

- (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 unauthorized personnel or legal counsel advising or instructing the individual specifically concerning security clearance process. Upon being made aware of the requirement to cooperate or provide 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;
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(f) the information was unsubstantiated or from a source of questionable reliability.

Applicant's drug and alcohol offenses occurred at least 11 years ago. There is no indication that he has an ongoing drug or alcohol problem. His bounced check offense occurred about five years ago. He stated that his wife uttered the fraudulent check. It is plausible that he took responsibility for that bounced check to protect his wife. AG ¶ 17(c) applies to the drug, alcohol, and bounced check offenses.

Applicant's deliberate failure to report the drug, alcohol, and bounced check offenses on his e-QIP remains a security concern. Those falsifications occurred about a year ago. Sufficient time has not elapsed to conclude that Applicant has reformed and rehabilitated himself and that such falsifications are unlikely to recur. None of the mitigating conditions apply to those falsifications.

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 relevant facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F 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.

While Applicant served honorably in the Marine Corps and is a valued employee in his current job, his delinquent debts and e-QIP falsifications raise serious questions about his reliability, trustworthiness, and good judgment. 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 has failed to mitigate the security concerns under the personal conduct and financial considerations guidelines.

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 F:	AGAINST APPLICANT
Subparagraphs 1.a – 1.y:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	Against Applicant
Subparagraphs 2.c – 2.e:	For Applicant
Subparagraph 2.f:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

James F. Duffy
Administrative Judge