



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



In the matter of:)
)
-----) ISCR Case No. 14-00479
)
Applicant for Security Clearance)

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

07/23/2014

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant mitigated Guideline E security concerns regarding inaccuracies in his security clearance applications. He failed, however, to mitigate Guideline F security concerns due to ongoing concerns regarding his alcoholism, which he cites as the root of his financial delinquencies. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On March 17, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). 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.

In a letter notarized on April 18, 2014, Applicant addressed the SOR allegations and requested a hearing before an administrative judge. The case was assigned to me

on May 9, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 15, 2014, setting the hearing for June 4, 2014. The hearing was convened as scheduled.

As a preliminary matter, allegation ¶ 1.a was struck from the SOR without objection. The Government then offered Exhibits (GX) 1-3, which were accepted into the record without objection. Applicant offered testimony. The transcript of the proceeding (Tr.) was received on June 12, 2014. With no additional materials received, the record was closed on June 18, 2014.

Findings of Fact

Applicant is a 53-year-old senior technical trainer who has been in the same position with a defense contractor for five years. He served honorably in the United States military from 1980 through 1993. Applicant has a high school education and received technical training while in the military. He is married and has no children. Applicant was unemployed between June 2007 and September 2007, then alternatively unemployed and underemployed from March 2008 to June 2009, due to circumstances beyond his control. He collected unemployment compensation during those periods. He has been continuously employed since June 2009.

Applicant has abused alcohol since 1999. He has never hidden his struggle with alcohol. (Tr. 18) As of the June 4, 2014, hearing, he had maintained sobriety since the end of April 2014, about six weeks. (Tr. 20) Applicant's alcohol abuse has not adversely impacted his work. Rather, he blames his alcoholism for creating his present financial distress. (Tr. 17-18, 23) His abuse of alcohol was mostly in public venues with friends, where he collected large bar tabs during long periods of time lasting from happy hour until closing; at times he would spend "\$200 bucks a night." (Tr. 24) These tabs were paid on Applicant's credit cards. Then, alcohol would get him "behind in things and [he did] not pay certain things because [he would be] trying to feed an addiction that's terrible." (Tr. 18) Alcoholism also contributed to his citations for driving under the influence (DUI) of alcohol in 1983, 2000, and 2004.

Applicant unsuccessfully sought treatment for his disease in 2004 and 2011. Applicant has attended Alcoholics Anonymous (AA) since at least 2004. He has an AA sponsor. He is currently in an intensive outpatient treatment program, which commenced in April 2014. It convenes three nights a week for two hours each evening at a well-regarded facility in his region. Group sessions are complemented with individual counseling. His longest period of sobriety in the past decade lasted for nearly a year-and-a-half, overlapping with his March 2008 to June 2009 period of unemployment and underemployment. (Tr. 22)

The debts at issue in the SOR (1.a-1.j) represent approximately \$27,000 in delinquent debt. Applicant admits to some of the debts. He disputes some of the other debts noted, but has not taken any action to dispute those entries with the cited creditors or the credit reporting bureaus. He presented no documentary evidence

indicating formal action has been taken on any of the debts at issue. (See, e.g., Tr. 37-38) Applicant presently has \$3,000 to \$4,000 in savings, and about \$20,000 in a retirement savings account. His present salary is about \$71,000 a year; his wife is a realtor who made about \$15,000 in the past year. He is current on his rent, household bills, and other recurring obligations. None of his current bills are delinquent. (Tr. 36) He has not received financial counseling, but he is contemplating seeking assistance with a consumer counseling service at some point in the future.

In 1980, 1994, and 2000, Applicant was investigated for earlier security clearances. His most recent security clearance applications (SCA) were from August 2013 and September 2013. On those SCAs, Applicant answered “no” to the questions related to Section 26 (*Financial Record – Delinquency Involving Routine Accounts: In the past seven (7) years...*). He did not disclose any financial issues or knowledge that, in 2007, his home was foreclosed upon because he believed all of the debts at issue had been delinquent for over seven years. He interpreted the questions as “trying to capture debts which were created within the preceding seven years.” (Tr. 40) Applicant made a mistake; he was not trying to mislead. (Tr. 39-40)

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 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.

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

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 engaging in illegal acts to generate funds.

Here, the Government introduced credible evidence showing Applicant has multiple delinquent debts, amounting to over \$27,000. He presented no documentary evidence indicating that he has addressed them in any manner or made any progress toward their satisfaction. Such facts are sufficient to invoke two of the financial considerations disqualifying conditions:

AG ¶ 19(a): inability or unwillingness to satisfy debts, and

AG ¶ 19(c): a history of not meeting financial obligations.

Five conditions could mitigate these finance-related security concerns:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(e) past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Although the debts at issue do not appear to be recent, Applicant concedes that they were acquired and disregarded due to his alcoholism, a condition with which he still suffers and for which he is currently seeking intensive treatment. Therefore, AG ¶ 20(a) does not apply.

Although little is known of Applicant's conduct regarding his debts during his periods of unemployment, there is evidence that he has sought intensive treatment for his alcoholism on at least three different occasions in the past decade. To the extent that his alcoholism resulted in the creation of his delinquency crisis, AG ¶ 20(b) applies in part. It does little, however, to mitigate its on-going existence and neglect.

Applicant has not received financial counseling, made progress on the debts at issue, or implemented a plan for addressing his delinquent debts. Indeed, no documentary evidence was introduced indicating any initiative on Applicant's part to address the debts noted in the SOR. Therefore, neither AG ¶ 20(c) nor AG ¶ 20(d) apply. AG ¶ 20(e) does not apply because Applicant provided no documentary proof showing he has formally disputed any of the debts at issue.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15:

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.

At issue are multiple allegations that Applicant falsified material facts on two recent SCAs. Applicant earnestly set forth an argument explaining how he interpreted the questions at issue to be strictly limited to debts newly acquired in the preceding

seven years. Given his credible testimony, continued candor, and plausible argument, I do not find that any of the personal conduct disqualifying conditions apply. Personal conduct security concerns are mitigated.

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). 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 incorporated my comments under the guidelines at issue 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 a mature, credible, and earnest man who has maintained his current position for nearly five years. He has a record for honorable military service. He has a high school education complimented by advanced technical studies in the military. He is married and has no children. There is no evidence that he meant to mislead the Government with his 2013 SCA answers. Despite suffering from alcohol abuse, his illness has not adversely affected his job performance.

By Applicant's own direct testimony, however, the creation and continued neglect of the delinquent debts at issue – amounting to about \$27,000 – is attributable to his alcohol abuse. He has suffered from alcohol abuse for at least a decade. During that time, his longest period of alcohol abstinence was about a year-and-a-half, an admirable achievement sadly cut short. At the time of the hearing, his current period of sobriety had lasted about six weeks. A longer period of demonstrated abstinence and sobriety is needed to demonstrate that he is able to control his drinking and, in turn, control his acquisition of alcohol-related debt and delinquency-related fines and fees. Moreover, Applicant failed to demonstrate that he has made positive strides in addressing any of the debts at issue. This process does not require that an applicant satisfy all of his debts. It does, however, demand that an applicant articulate a workable plan for addressing his debts and evidence that such a plan has been successfully implemented. Based on the facts here, I find that financial considerations security concerns remain unmitigated.

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 F:	AGAINST APPLICANT
Subparagraph 1.a:	Allegation Withdrawn
Subparagraphs 1.b-1.j:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a-2.c:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Arthur E. Marshall, Jr.
Administrative Judge