



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 1) ISCR Case No. 14-00624
)
 Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

01/30/2015

Decision

DUFFY, James F., Administrative Judge:

Applicant mitigated the security concerns arising under Guidelines F (financial consideration), H (drug involvement), G (alcohol consumption), and E (personal conduct). Eligibility for access to classified information is granted.

Statement of the Case

On June 17, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F, H, G, and E. DOD took that action 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.

The SOR set forth reasons why DOD adjudicators could not find under the Directive that it is clearly consistent with the national interest to grant Applicant a

¹ Applicant's middle name was misspelled in the SOR.

security clearance. On July 14, 2014, Applicant answered the SOR and elected to have a decision based on the administrative record in lieu of a hearing. On October 7, 2014, Department Counsel prepared a File of Relevant Material (FORM) that contained documents identified as Items 1 through 8. A complete copy of the FORM was mailed to Applicant on November 5, 2014. He was given 30 days from its receipt to file objections or submit matters in refutation, mitigation, or extenuation. He timely submitted matters that were added to the record without objection as Item 9. The case was assigned to me on January 5, 2015.

Findings of Facts

Applicant is a 25-year-old clerk who has been working for a federal contractor since August 2013. He graduated from high school in 2007. He attended college full-time from 2007 to 2010 without earning degree. His Response to the FORM reflects that he resumed taking college courses in 2014. He has never been married. He has a son who is about two years old and lives with him. This is the first time that he has sought to obtain a security clearance.²

Under Guideline F, the SOR alleged that Applicant had eleven delinquent debts totaling \$25,949 (SOR ¶¶ 1.a-1.k). Under Guideline H, the SOR asserted that Applicant used marijuana between May 2003 and May 2013 (SOR ¶ 2.a), that he purchased marijuana once or twice a month between August 2007 and May 2013 (SOR ¶ 2.b), and that he used cocaine two times between December 2008 and June 2011 (SOR ¶ 2.c). Under Guideline G, the SOR stated that Applicant was arrested and charged with driving under the influence of alcohol or drugs (DUI) in November 2013 (SOR ¶ 3.a). The Guideline H and G allegations were cross-alleged as the sole Guideline E allegation (SOR ¶ 4.a). In his Answer to the SOR, Applicant denied seven of the delinquent debts (SOR ¶¶ 1.a-1.f and 1.k), admitted the other four debts (SOR ¶¶ 1.g-1.j), and admitted each of the Guideline H, G, and E allegations. His admissions are incorporated as findings of fact.³

In an Electronic Questionnaire for Investigations Processing (e-QIP) dated October 3, 2013, and during an Office of Personnel Management (OPM) interview on December 3, 2013, Applicant disclosed that he used marijuana from May 2003 to May 2013. He noted that he initially used marijuana two or three times a month, but increased that usage to four or five times a month in about 2012. He further disclosed that he used cocaine on two occasions (December 2008 and June 2011) and purchased marijuana once or twice a month from August 2007 to May 2013.⁴

In the e-QIP, Applicant also stated that he had not smoked marijuana since May 2013 and that he did not intend to use marijuana or any controlled substances in the

² Item 4.

³ Items 1 and 3.

⁴ Items 4 and 8.

future. He indicated using marijuana was a waste of time, and he did not want to do anything to hinder his security clearance eligibility. He stated he had grown up and was focused on his family.⁵

In his Answer to the SOR, Applicant again stated that he completely discontinued any use of illegal drugs and noted that he was willing to take a polygraph to demonstrate his commitment and honesty. He further stated that he is willing to take drug tests as frequently as required. On July 9, 2014, Applicant took a urinalysis test that reflected his urine was negative for marijuana, cocaine, amphetamine, opiate, or PCP metabolites. The overall result of that test was categorized as “negative.”⁶

In the OPM interview, Applicant stated that he was arrested for DUI about two weeks earlier on November 16, 2013. He stated that he had consumed about three beers before driving on that occasion. He was pulled over by a police officer after accidentally running a red light. He failed a field sobriety test and indicated he blew a .082% on a breathalyzer test. In his Answer to the SOR, he indicated that he had not consumed alcohol for several hours before the arrest. He provided court documents showing the charge was dismissed on January 30, 2014.⁷

In the OPM interview, Applicant further acknowledged he consumed alcohol socially about twice per month and became intoxicated about once per year. He indicated that he would become intoxicated after consuming about eight or nine beers. Besides the DUI arrest discussed above, he has had no problems arising from his alcohol consumption.⁸

From May 2010 to February 2011, Applicant was employed as a sales representative by two employers. He voluntarily left his job in February 2011 and remained unemployed until May 2011. From May 2011 to August 2013, he was employed in three successive jobs before obtaining his current employment. He attributed his delinquent debts to a lack of organization.⁹

SOR ¶ 1.a – student loan past due in the amount of \$1,578. In a credit report dated November 16, 2013, this account was listed as late over 120 days. Applicant presented a letter from the lender indicating that he paid the lender \$7,364 on April 14, 2014, to payoff this account.¹⁰

⁵ Item 4.

⁶ Item 4.

⁷ Items 2 and 8.

⁸ Item 8.

⁹ Items 4 and 8.

¹⁰ Items 2 (Attachment 1A) and 6.

SOR ¶ 1.b – collection account in the amount of \$186. The original creditor on this account was a college. In a credit report dated November 16, 2013, the date of last activity on this account is listed as January 2010. Applicant presented a letter from the collection agency dated July 9, 2014, reflecting receipt of an agreed payment and indicating when the payment cleared the account would be considered paid. His credit report dated October 2, 2014, reflected that this account was paid.¹¹

SOR ¶ 1.c – collection account in the amount of \$98. This was a medical debt that was apparently delinquent for two years. On December 3, 2013, Applicant paid this debt.¹²

SOR ¶¶ 1.d and 1.e – collection accounts in the amounts of \$5,225 and \$1,447, respectively. These were student loans that went into default in January 2012. Applicant provided a letter from the lender dated July 9, 2014, indicating that these student loans were “Paid in Full by Consolidation” on April 8, 2014. His credit report dated October 2, 2014, reflected that these accounts were paid.¹³

SOR ¶ 1.f – collection account in the amount of \$481. This was a telecommunication service account. Applicant provided a letter from the collection agency dated June 27, 2014, reflecting this account was settled in full on November 12, 2013.¹⁴

SOR ¶¶ 1.g – 1.j – collection accounts in the amounts of \$2,607, \$4,964, \$3,988, and \$5,076, respectively. These were federal student loans. In his Answer to the SOR, Applicant admitted that he owed these student loans and indicated that they have been consolidated into one account. He set up a payment plan with the loan servicer that provided for automatic monthly payments of \$50. He provided proof of those payments between October 2013 and June 2014. He also submitted a letter from the U.S. Department of Education dated December 11, 2014, indicating that he had five federal student loans totaling \$17,679 and the loans were in a “repayment status.” Another letter from a government agency reflected that he rehabilitated his federal student loans and was eligible for all benefits associated with those loans before their default.¹⁵

SOR ¶ 1.k – collection account in the amount of \$299. The original creditor on this account was a college. Applicant provided a letter from the collection agency reflecting he made a payment of \$7,350 on April 14, 2014 and that the account had

¹¹ Items 2 (Attachment 1B), 5, and 6.

¹² Items 2 (Attachment 1C), 5, and 6.

¹³ Items 2 (Attachment 1D), 5, and 6.

¹⁴ Items 2 (Attachment 1F) and 6.

¹⁵ Items 2, 3, 6, and 9.

been closed and returned to the creditor. Final disposition of the debt remained with the creditor. This debt may be a duplicate of the debt alleged in SOR ¶ 1.a.¹⁶

In his Answer to the SOR, Applicant stated:

I admit that in the past I have made some serious mistakes and my judgment could be called into question but since I have learned I was a father, I have realized the importance of being a role model for my son. I have been an outstanding employee, and have also been recommended to receive bonuses on numerous occasions.¹⁷

Furthermore, Applicant stated that he is capable of meeting all of his financial obligations and his current financial situation was good. Other than his federal student loans that have been resolved, his most recent credit report reflected no delinquent debts. He indicated that, even if he is not granted a security clearance, he considers this process a win because he has completely turned his life around and will continue to conduct himself in appropriate ways.¹⁸

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 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.

¹⁶ Items 2 (Attachment 1K) and 6.

¹⁷ Items 2 and 8.

¹⁸ Items 5, 8, and 9.

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 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 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 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 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 a number of delinquent debts that he was unable or unwilling to pay for extended periods. This evidence is sufficient to raise the above disqualifying conditions.

Four 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.

Starting in about December 2013, Applicant began taking steps to resolve all of the alleged delinquent debts. He paid the debts alleged in SOR ¶¶ 1.a – 1.f and 1.k. He rehabilitated his federal student loans in SOR ¶¶ 1.g – 1.j. His most recent credit report reflects no new delinquent debts. He provided sufficient evidence to show that his financial problems are under control and are being resolved. His financial problems are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(c) and 20(d) apply. Applicant attributed his delinquent debt to a lack of organization. AG ¶ 20(b) does not apply.

Guideline H, Drug Involvement

AG ¶ 24 expresses the security concern pertaining to drug involvement:

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

(a) Drugs are defined as mood and behavior altering substances, and include:

(1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and

(2) inhalants and other similar substances;

(b) drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

The following disqualifying conditions under AG ¶ 25 potentially apply:

(a) any drug abuse; and

(b) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

From 2003 to 2013, Applicant purchased and used illegal drugs. The above disqualifying conditions apply.

The following mitigating conditions under AG ¶ 26 are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and

(b) a demonstrated intent not to abuse any drugs in the future, such as: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; (3) an appropriate period of abstinence; (4) a signed statement of intent with automatic revocation of clearance for any violation.

Applicant used illegal drugs when he was between the ages of 14 and 24. This was a period of youthful indiscretion. He voluntarily disclosed his illegal drug involvement in his e-QIP and OPM interview. His disclosures have been consistent. There is no reason to believe that he has not been truthful in his disclosures. Since the birth of his son more than a year and a half ago, he has not used illegal drugs. He indicated that he will not use illegal drugs in the future because he is focused on his family. The evidence supports a determination that Applicant has placed his illegal drug involvement behind him and that such conduct is unlikely to recur. AG ¶¶ 26(a) and 26(b) apply.

Guideline G, Alcohol Consumption

AG ¶ 21 expresses the security concern pertaining to 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.

The guideline notes several disqualifying conditions that could raise security concerns under AG ¶ 22. One is potentially applicable in this case:

(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.

Applicant was arrested for DUI in May 2013 when his blood alcohol content was .082%. The above disqualifying condition applies.

One mitigation condition under AG ¶ 23 is potentially applicable:

(a) so much time has passed, or the behavior was so infrequent, or it happened under such unique circumstances that it is unlikely to recur or does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

When arrested, Applicant's blood alcohol level was slightly above the legal limit. The charge was dismissed. No evidence was presented that he has been diagnosed or evaluated as having an alcohol problem. His reported alcohol consumption is not excessive or unusual. His 2013 arrest is an isolated incident that does not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 23(a) applies.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining 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 in this case:

(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 engaging in activities which, if known, may affect the person's personal, professional, or community standing

Applicant admitted that he deliberately used and purchased illegal drugs for a number of years and was arrested for DUI in May 2013. AG ¶¶ 16(c) and 16(e) apply.

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

(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.

For the reasons discussed under Guidelines H and G above, AG ¶¶ 17(c), 17(d), and 17(e) apply. The Guideline E 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):

(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, H, 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.

In making this favorable security clearance determination, all of Applicant's questionable conduct has been considered as a whole. Applicant is a young man who admitted that he has made mistakes in the past. He has learned from his mistakes and has turned himself around. Since he became a father, he has focused on his family and acted responsibly by terminating his drug involvement and taking action to resolve his delinquent debts. He obtained a job, became a valued employee, and received bonuses. He provided sufficient evidence to show that he has matured in putting his irresponsible behavior behind him. He is now on the right track.

Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the financial consideration, drug involvement, alcohol consumption, and personal conduct security concerns.

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: Subparagraphs 1.a – 1.k:	FOR APPLICANT For Applicant
Paragraph 2, Guideline H: Subparagraphs 2.a – 2.c:	FOR APPLICANT For Applicant
Paragraph 3, Guideline G: Subparagraph 3.a:	FOR APPLICANT For Applicant
Paragraph 4, Guideline E Subparagraph 4.a:	FOR APPLICANT For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

James F. Duffy
Administrative Judge