



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



In the matter of:)	
)	
)	ISCR Case No. 14-01617
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel and
Ray T. Blank, Jr., Esquire, Department Counsel
For Applicant: *Pro se*

06/30/2015

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, Applicant's eligibility for access to classified information is denied.

Statement of the Case

Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) on January 28, 2013, and he certified it on February 6, 2013. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on June 13, 2014, detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented on September 1, 2006.

Applicant received the SOR on September 15, 2014, and he answered it on September 28, 2014. Applicant requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on December 5, 2014, and I received the case assignment on January 8, 2015. DOHA issued the first Notice of Hearing on January 27, 2015, and I convened the first hearing as scheduled on February 11, 2015. The Government offered exhibits (GE) marked as GE 1 through GE 4, which were received and admitted into evidence without objection. Applicant testified. He submitted exhibits (AE) marked as AE A through AE C, which were received and admitted into evidence without objection. DOHA received the first hearing transcript (Tr.1) on February 20, 2015.

At the beginning of the first hearing, Department Counsel sought to amend the SOR to add a new guideline. Because of due process considerations, Department Counsel was not allowed to proceed with a hearing on the new guideline at this time. Applicant requested time to answer the proposed amendments. After discussion, the parties agreed to schedule a second hearing on March 31, 2015 to address the issues raised in the motion to amend the SOR. In light of these discussions, the motion to amend the SOR was granted, and the SOR is amended to include allegations under Guideline H.

DOHA issued a second Notice of Hearing on February 27, 2015, and I convened the hearing on March 31, 2015 by video teleconference and with a new Department Counsel. The Government offered exhibit GE 5, which was received and admitted into evidence without objection. Applicant testified. He submitted two exhibits marked as AE D and AE E, which were received and admitted into evidence without objection. At the close of the first hearing, Applicant was given additional time to submit further documentation about his finances. He timely submitted AE F through AE P. DOHA received the second hearing transcript (Tr.2) on April 6, 2015. I held the record open for Applicant to submit additional matters related to his drug use. He requested additional time to submit a drug evaluation report on May 26, 2015, and for good cause, he was given until June 5, 2015 to submit the report.¹ He timely submitted this report and other post-hearing documents, AE Q - AE W, which were received and admitted. The record closed on June 5, 2015.

Findings of Fact

In his Answers to the SORs, Applicant admitted all the factual allegations in the SOR. His admissions are incorporated herein as findings of fact. He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

¹Department Counsel objected to giving Applicant the additional time. The substance of Department Counsel's objections concerned the weight given to the drug assessment report, not to Applicant's request for additional time.

Applicant, who is 29 years old, works as a senior associate scientist engineer (software developer) for a DOD contractor. Applicant began his current employment in December 2010. The president of his company wrote a letter of recommendation praising Applicant's skills, ability, and aptitude for the work he performs. Applicant received an exceeds on his most recent performance appraisal.²

Applicant graduated from high school in 2004 and from college in 2010. He received a bachelor's degree in information technology. Applicant is not married, but he lives with his girlfriend. He does not have any children.³

Finances

Applicant currently earns \$5,712 in monthly gross income, and he receives \$3,056 a month in net income. In addition to payroll taxes, insurance and retirement deductions, \$539 is automatically deducted each month as a garnishment to pay his federal education loan debt. At the time of the first hearing, Applicant advised that his girlfriend worked sporadically, which resulted in sporadic income. He paid most of the household expenses because her income was unreliable. After the second hearing, Applicant advised that his girlfriend obtained a steady job with steady income. Her new job will have a positive impact on household income and payment of household expenses.⁴

Applicant has not had credit counseling. He submitted a budget. Each month, he pays \$600 for rent, \$50 for his cell phone, \$150 for gasoline, \$400 for food, \$10 for netflix, \$10 for Google play music, and \$927 on his private student loan. His girlfriend pays \$50 for a cell phone, \$100 for gasoline, \$270 for utilities, and \$100 for food. In March, he had unexpected expenses totaling approximately \$1,170. He will be reimbursed by his employer for \$400 in travel expenses incurred in March 2015. Applicant's customary monthly expenses total \$2,147, leaving \$909 for debt payment.⁵

The SOR identified eight unpaid debts, one unpaid judgment, and a failure to file federal and state income tax returns in 2010. Applicant advised that he performed independent work for a company in 2010. The company did not provide him with a form 1099 showing his income for tax purposes. He contacted the company several times about the 1099 form, but the company never located the form or had any record to show it had paid him for work. Because he did not have the 1099 form, Applicant did not believe he could file his 2010 federal and state income tax returns. He failed to follow up on his efforts to obtain the 1099 form. After the hearing, he again attempted to get a 1099 form for the work performed in 2010. He was again unsuccessful. Upon a

²GE 1; AE F; AE L; Tr.1, p. 31-33, 42-43.

³GE 1; GE 4; Tr.1, p. 34.

⁴AE G; AE M; Tr. 2, p. 63-64.

⁵AE M; Tr. 1, p. 54.

suggestion at the hearing, Applicant prepared and filed his 2010 federal and state income tax returns because he now understands that when he receives the 1099, he can file an amendment to the return. Applicant provided a copy of his prepared tax returns for 2010 and a copy of his 2010 wage and tax statement from the Internal Revenue Service (IRS). At the present, Applicant is entitled to a tax refund from the IRS and from the state revenue office for 2010.⁶

Applicant timely filed his tax returns for the tax years 2011, 2012, and 2014. At the hearing, he indicated that he thought he had filed his 2013 tax return, but later learned the tax return had not been filed. Because he knew he owed taxes for the tax year 2013, he requested an extension of time to pay the taxes owed. Turbo tax requested an extension of time to file the return. When he realized that he had misread the Turbo tax information on extension of time, Applicant filed his 2013 tax return. Applicant knows that he owes income taxes for 2013 and 2014 and is working to develop a payment plan to pay this debt. The IRS has not taken any action against Applicant because he did not file the 2010 and 2013 tax returns timely.⁷

Applicant contacted the creditor in SOR allegation 1.g (\$1,057) after the hearing in February 2015 and made arrangements to pay this debt. He and the creditor agreed that he would pay \$75 a month as an automatic withdrawal from his checking account beginning in May 2015 until the debt was paid. Applicant disputes the debt in SOR allegation 1.f (\$500) because he tested a cell phone for two weeks and timely returned the phone. He has not formally disputed this debt with the creditor or the credit reporting agencies.⁸

Applicant indicated that he intended to pay \$200 a month beginning in May 2015 until he resolved the \$1,314 debt, now a \$1,690 debt, in SOR allegation 1.j. He has not provided proof of any payments. Applicant has not contacted the creditors in SOR allegations 1.c (\$570 judgment), 1.d (\$447), 1.e (\$698), and 1.k (\$673) to pay or develop payment plans for these debts.⁹

Finally, the SOR identified two student loans (1.h for \$2,544 and 1.i for \$6,308) held by the Department of Education. Applicant made arrangements to pay these loans in 2013. When he missed payments, he made arrangements for a voluntary garnishment of his wages each payday. He pays \$539 a month on these loans, and he anticipates that this debt will be paid by the end of the year. He verified that his current balance on his student loan debt with the Department of Education is \$3,155. Applicant also has two private student loans totaling \$65,726. He pays \$927 month on these loans and has made a substantial monthly payment on this debt since February 2013.

⁶SOR; AE B; AE K; AE S; Tr.1, p. 35-37.

⁷GE 4; AE H; AE J; AE Q; AE R; Tr.1, p. 53-58; Tr. 2, p. 45-46.

⁸GE 2; GE 3; AE U; Tr. 1, p. 51-52.

⁹GE 2; GE 3; AE P; Tr. 2, p. 51-52.

Some months he cannot make the full payment. In March 2015, he did not make the payment because of car repairs.¹⁰

Drugs

Applicant began using marijuana in October 2010 while a high school student. He increased his marijuana use in college. After he graduated from college, he stopped using marijuana. Applicant describes his college use of marijuana as his heaviest use. He purchased marijuana at times. He did not sell marijuana to others nor did he grow marijuana.¹¹

Applicant was not using marijuana when he completed his e-QIP in January 2013 and when he met with the Office of Personnel Management (OPM) investigator in April 2013. Applicant acknowledges that he started using marijuana with his brother and friends later in 2013. He purchased marijuana, but he did not sell marijuana to others nor did he grow it. He continued to periodically use marijuana until August 2014, when he failed a drug test at work. Before he received the test results, he met with the company president and told him that he would probably fail the drug test. He discussed options with him about managing his drug use. The company president had him sign an agreement that if he failed another drug test, he would lose his job. He also agreed to random drug tests. He passed the two random drug performed by his company in March 2015.¹²

Applicant has not used marijuana since August 2014. He reduced his contacts with his friends who use marijuana and with his brother. If he is aware that they are using marijuana, he stays away. His brother is respectful of his decision not to use marijuana.¹³

Applicant underwent a drug assessment evaluation on April 16, 2015. The counselor reviewed his family, social, health and educational history. The counselor discussed Applicant's drug history and usage. A random drug test was conducted, and it was negative. The counselor did not recommend any treatment at this time and did not diagnose drug abuse or drug dependency.¹⁴

When he completed his e-QIP in January 2013, Applicant indicated his intent not to use drugs in the future. He made the same statement to the OPM investigator in April 2013. He acknowledged these statements. At the hearing, he reaffirmed his intent not to

¹⁰GE 3; AE A; AE C; AE N; AE O; AE T; Tr. 1, p. 26-30, 38-42, 45, 60-61, 65.

¹¹GE 1; GE 4; Tr. 2, p. 19-22.

¹²GE 5; AE D - AE F; Tr. 2, p. 22-27, 32-36.

¹³Tr. 2, p. 24-27.

¹⁴AE W; Tr. 2, p. 39-40.

use marijuana in the future because his job is more important than marijuana. He understands that future use could jeopardize his job and future employment. He believes because others at work are aware of his use, it is easier for him to remain abstinent. His company has given him a last chance.¹⁵

In his letter of recommendation, the president of Applicant's company acknowledged that he knew about Applicant's financial problems and his drug use. He also stated that Applicant was taking steps to correct both problems.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 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, 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. . . ." An applicant has the ultimate burden of persuasion for obtaining 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

¹⁵GE 1; GE 4; Tr. 2, p. 28-29, 35, 37.

¹⁶AE E; AE F.

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 an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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 relating to the guideline 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.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

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

Applicant developed financial problems after college. He had not resolved many of the debts at the time the SOR was issued. These two disqualifying conditions apply.

The financial considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through ¶ 20(f), and the following are potentially applicable:

- (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 pays his education debts, which requires more than \$1,400 a month of his income. When he realized that he was not always paying his Department of Education student loan, he made arrangements for his payments to be deducted from his pay starting in 2013. He recently contacted two other creditors listed in the SOR and made arrangements for one debt to be paid through a monthly deduction. He plans to pay \$200 a month towards another debt. Although he has sufficient funds to make this payment, he has not shown that he made any payments.

Applicant filed his 2010 federal and state income tax returns five years late, because he could not obtain all the income documentation he needed to file his return. When he learned that he could file the returns and later amend the returns when or if he gets the proper document, he filed the returns. He has sufficient income to pay his customary monthly expenses since his girlfriend has full-time employment. The above mitigating conditions are partially applicable.

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.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying:

(a) any drug abuse (see above definition);

(b) testing positive for illegal drug use; and

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

From 2002 until 2010, Applicant used marijuana with varying frequency. He abstained from using marijuana until late 2013 when he resumed his use of marijuana. He failed a drug test at work in August 2014 because of his marijuana use. A security concern has been established under AG ¶¶ 25(a), 25(b) and 25(c).

AG ¶ 26 provides conditions that could mitigate security concerns:

(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;

(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; and,

(4) a signed statement of intent with automatic revocation of clearance for any violation;

(c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and,

(d) satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

I have reviewed all of the mitigating conditions. Applicant is not in a treatment program nor has he been in a treatment program as none has been recommended. His drug use is voluntary, not the result of abuse of prescription drugs. It has been less than a year since his last use of marijuana. Applicant stated that he did not intend to use marijuana again in the future, but he made this statement twice in 2013 then resumed use of marijuana. None of the mitigating conditions 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 an 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In assessing whether an applicant has established mitigation under Guideline F, the Appeal Board provided the following guidance in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that he has ". . . established a plan to resolve his financial problems and taken significant actions to implement that plan." See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant's financial problems are long-standing. To his credit, he has consistently paid his

education loans, which reflects a track record for paying some of his debts. He delayed filing his 2010 federal and state income tax returns because he did not have a 1099 form, instead of making inquiries about how he should manage this issue. He recently filed the returns when he learned that he could amend his tax return when he received the 1099 form. Applicant has not been diligent about resolving his financial issues, ignoring many of the smaller debts until recently. His household income is improving because his girlfriend found a steady job. While his unpaid SOR debts are not large, he has an outstanding federal and state tax debt, which he has not resolved. He needs more time to work out his finances and gain control over his debts.

Applicant's use of marijuana in high school and college was far enough in the past not to be a security concern. His decision to start using marijuana again in 2013 is a security concern. When he completed his e-QIP and when he met with the OPM investigator, he stated that he had no intent to use marijuana in the future. Yet, just a few months later, he resumed his marijuana use, which showed poor judgment and decision making by him. He continued his use of marijuana until he underwent a workplace drug test. He knew he would fail the test. Before he received the results, he spoke with his company president about his conduct and discussed how to proceed. Applicant agreed to company-sponsored random drug tests and has passed the two given. His decision to meet with the company president before the drug-test results were received, showed an improvement in his judgment. It has been less than one year since Applicant failed his drug test and since he stopped his marijuana use. Although he stays away from his friends when they are using marijuana, he continues to spend sometime with them. His recent drug evaluation contained no diagnosis of a drug problem and recommended no treatment, which reflects positively on him. Marijuana is an illegal drug and Applicant's recent decision to resume use of this drug when he knew he was under consideration for a security clearance raises concerns about his judgment and reliability. Sufficient time has not passed for me to be confident that he will continue with his goal of remaining abstinent from marijuana use.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his finances and drug use under Guidelines F and H.

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:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant

Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	Against Applicant

Paragraph 2, Guideline H:	AGAINST APPLICANT
---------------------------	-------------------

Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	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 a security clearance is denied.

MARY E. HENRY
Administrative Judge