



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



In the matter of:)
)
) ISCR Case No. 14-01724
)
)
Applicant for Security Clearance)

Appearances

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

07/23/2015

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the financial considerations security concerns, but he did not mitigate the drug involvement or the personal conduct security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On October 2, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F, H, and E. DOD acted 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) effective within the DOD on September 1, 2006.

Applicant answered the SOR on October 21, 2014, and elected to have his case decided on the written record. Department Counsel submitted the Government's File of

Relevant Material (FORM) on March 17, 2015. The FORM was mailed to Applicant and he was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He submitted a written response to the FORM dated May 29, 2015, which was admitted into evidence without objection as Item 6. The Government's evidence (Items 1-5) was also admitted into evidence without objection. The case was assigned to me on June 17, 2015.

Findings of Fact

Applicant admitted all the allegations in his answer to the SOR. Those admissions are adopted as findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 42 years old. He is divorced and has two children (including one step-child whose status since the divorce is unknown). He has worked for his current employer, a defense contractor, since December 2013. He received a certificate from a technical training school in May 1995. He was unemployed from October 2013 to December 2013.¹

The SOR lists 24 delinquent debts and a prior Chapter 7 bankruptcy. The debts include 21 medical debts totaling approximately \$20,807 (SOR ¶¶ 1.b – 1.h and 1.j – 1.w); one utility debt in the amount of \$218 (SOR ¶ 1.i); one telecommunication debt in the amount of about \$239 (SOR ¶ 1.x); and one consumer debt in the amount of \$589 (SOR ¶ 1.y). These debts are supported by credit reports from December 2013 and February 2015.²

Applicant's admitted conduct raised in the SOR concerning Guideline H includes using marijuana in 1990 and again in February 2013 (SOR ¶ 3.a). The personal conduct allegations include intentionally failing to provide correct information while completing his security clearance application in December 2013 concerning his past use of marijuana in the last seven years (SOR ¶ 2.a) and whether he had any collection debts in the past seven years (SOR ¶ 2.b).

Applicant provided documentation showing that all but five of his medical debts (SOR ¶¶ 1.m, and 1.o – 1.r) were paid as a result of receiving a workman's compensation claim. A letter from his attorney indicated that he was pursuing such a claim and Applicant submitted a recent credit report showing that the medical debts were no longer listed. He stated that SOR ¶ 1.m will be covered by the workman's compensation payout and that he will pay the three small debts that are family-related medical expenses. He provided documentation showing that the three non-medical

¹ Items 1-3.

² Items 4-5.

debts were all paid (SOR ¶¶ 1.i, 1.x, and 1.y). He also received financial counseling during his 2007 Chapter 7 bankruptcy.³

Applicant completed his security clearance application (SCA) in October 2013. At that time, he failed to disclose his marijuana use and his delinquent debts when specifically asked to provide that information. In December 2013, he was interviewed by an investigator. He disclosed that he used marijuana in February of 2013 when he was helping a friend move. After the move, they socialized by drinking alcohol and smoking a marijuana cigarette produced by a friend of the person who was moving. Applicant smoked from the marijuana cigarette. He immediately felt the effects of smoking the marijuana. He knew using marijuana was wrong, but used it because of peer pressure. He also admitted to using marijuana one time in 1990. He was at a friend's house and the friend produced a marijuana cigarette. He used the marijuana because of peer pressure. He claimed that he does not intend to use marijuana in the future. He also claims that he failed to list the 2013 marijuana use on his SCA because he did not understand the question. The question he claimed not to understand is the following: "In the last seven years, have you illegally used any drugs or controlled substances." He also disclosed the full extent of his financial situation to the investigator. He also used the lack of understanding explanation as the reason he failed to list his financial delinquencies on his SCA.⁴

Applicant provided two character letters, one from a supervisor and one from a neighbor. The supervisor described Applicant as "reliable and trustworthy." The neighbor stated that Applicant's work with the neighborhood association has been beneficial and appreciated.⁵

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,

³ Items 1 (p. 12-17), 6.

⁴ Items 1-3.

⁵ Item 1 (p. 18-19).

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, 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 that an 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 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

AG ¶ 18 expresses the security concern for financial considerations:

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. I have considered all of them under AG ¶ 19 and the following potentially apply:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

Applicant has delinquent debts that remain unpaid or unresolved. He also has a prior Chapter 7 bankruptcy. I find both disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

(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.

The bulk of Applicant's debts were medically related and as a result of his successful workman's compensation claim, he was able to pay all but two of the medical debts. Those balances are relatively small and he plans to pay them in the near future. He paid all the non-medical debts as well. He provided sufficient evidence to show that the majority of debts were related to his workman's compensation claim that is being resolved. His debts are unlikely to recur. Applicant's financial problems are being resolved or under control. I find mitigating conditions AG ¶¶ 20(a) – 20(d) apply.

Guideline H, Drug Involvement

AG ¶ 24 expresses the drug involvement security concern:

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.

I have considered all of the evidence in this case and the disqualifying conditions under drug involvement AG ¶ 25 and found the following relevant:

(a) any drug abuse;

Appellant illegally used marijuana in 1990 and again in February 2013. I find that the above disqualifying condition applies.

I have considered all of the evidence in this case and the mitigating conditions under drug involvement AG ¶ 26 and found the following relevant:

(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;

Applicant's admitted drug use of marijuana happened as recently as 2013, a few months before he completed his SCA and in 1990. Although two uses over 23 years is infrequent, the similar pattern of his use is troubling and cause for concern. In both instances, he was with friends and succumbed to "peer pressure" which resulted in him using marijuana. At the mature age of 42, he knew it was wrong, but did it anyway. These circumstances lead me to conclude that his actions cast doubt on his current reliability, trustworthiness, and especially his judgment. AG ¶ 26(a) does not apply. The evidence does not support that Applicant demonstrated his intent not to abuse drugs in the future. His 2013 use is recent and although he stated he does not intend to use in the future, he did not commit that intent to writing with automatic revocation of his clearance for any future violation. AG ¶ 26(b) does not apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the personal conduct security concern:

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. 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; and

Applicant failed to list material information about his past marijuana use and his delinquent collection accounts on his SCA completed in December 2013. His explanation for not providing the information was that he did not understand the questions. I find this explanation unpersuasive. The questions are straight forward and not complicated. The reasonable inference to draw, based upon the evidence, is that Applicant deliberately withheld the information to seek an advantage in gaining a security clearance because he was concerned that revealing this derogatory information would minimize his chances for a clearance. His most recent marijuana use occurred only months before he completed his SCA. He deliberately failed to list his prior marijuana use and his financial collection account information on his security clearance application in 2013. AG ¶ 16(a) applies.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered all of the mitigating conditions under AG ¶ 17 and found the following relevant:

(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.

I considered all of the facts and circumstances surrounding Applicant's falsifications. Falsifying information on a security clearance application is not a minor offense and doing so casts doubt on his trustworthiness, reliability, and good judgment. AG ¶ 17(c) does not 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 the applicant's conduct and all the 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 guideline 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 considered Applicant's character references. He mitigated his financial concerns. However, he engaged in recent drug use and intentionally provided false information on his SCA. Therefore, he failed to provide sufficient evidence to mitigate the security concerns.

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 mitigated the security concerns arising under Guideline F, financial considerations, but did not mitigate the concerns for Guideline H, drug involvement and Guideline E, personal conduct.

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: Subparagraphs 1.a – 1.y:	FOR APPLICANT For Applicant
Paragraph 2, Guideline E: Subparagraphs 2.a – 2.b:	AGAINST APPLICANT Against Applicant
Paragraph 3, Guideline H: Subparagraph 3.a:	AGAINST APPLICANT 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.

Robert E. Coacher
Administrative Judge