



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



In the matter of:)
)
) ISCR Case No. 14-05582
)
Applicant for Security Clearance)

Appearances

For Government: Braden Murphy, Esq., Department Counsel
For Applicant: *Pro se*

08/17/2015

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant refuted the Government's security concerns under Guidelines G, alcohol consumption; H, drug involvement; and I, psychological conditions, but failed to mitigate the financial considerations security concerns under Guideline F. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On January 3, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines G, alcohol consumption; H, drug involvement; I, psychological conditions; and F, financial considerations. 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.

On March 26, 2015, Applicant answered the SOR and requested a decision based on the record. On May 18, 2015, the Government requested a hearing before an administrative judge. On June 3, 2015, Department Counsel from the Defense Office of Hearings and Appeals (DOHA) amended the SOR to include an additional allegation. The case was assigned to me on June 12, 2015. DOHA issued a notice of hearing on June 19, 2015. I convened the hearing as scheduled on July 29, 2015. The Government offered exhibits (GE) 1 through 7, which were admitted into evidence without objection. Applicant testified and offered Applicant Exhibits (AE) A through C, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on August 6, 2015.

Procedural Matters

Based on Applicant's testimony, Department Counsel moved to amend the SOR and include in paragraph 4.b the words "2013 and 2014." Applicant did not object and the motion was granted.¹

Findings of Fact

Applicant denied the SOR allegations under Guidelines G, H, and I, and admitted the allegations under Guideline F. I have incorporated his admissions into the findings of fact. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 37 years old. He earned a bachelor's degree in 2000 and a juris doctor in 2003. He is not licensed to practice law. He married in 2012 and divorced in 2014. He does not have children. He has not served in the military.²

Applicant worked after he completed school, but was only earning enough to pay his monthly bills. From approximately 2006 to 2012, he worked as a consultant, but the income was inconsistent. He then worked for a federal contractor for 20 months before being laid off and resuming his consulting job in January 2014. His income is based on contracts he receives. Sometimes he does not have contracts and his income then fluctuates and often does not meet the level of full-time employment. When he is paid, he is paid by the hour.³

The allegations under Guidelines G, H and I stem from one incident. In May 2013, Applicant was recently separated from his wife, and they were going through a divorce. They had recently lost a child by miscarriage. He had moved to a new state due to a job his wife had accepted. He did not have a support system in the new state. Work was stressful because people were being laid off. He had difficulty sleeping and

¹ Tr. 92-94.

² Tr. 30-32.

³ Tr. 32-35, 68-69, 74-75.

was suffering from anxiety. His primary care physician prescribed medication to help his symptoms. He could not recall if she specifically told him not to consume alcohol while taking the medication.⁴

Applicant went to work, but was not feeling well. He left work because he felt sick. He was taking an over-the-counter cold medicine. He admitted he was having a bad day. When he got home he consumed a couple alcoholic drinks. He talked to his supervisor at work, who asked how he was feeling. He told him he felt physically bad and was sick. His supervisor was concerned and misinterpreted Applicant's response and contacted the police to conduct a welfare check on Applicant. His supervisor provided a written statement that acknowledged that Applicant was not abusing drugs or alcohol, nor did he attempt suicide or was a suicide risk. He explained that the wellness check was due to a miscommunication.⁵

The police made contact with Applicant. He stated one officer was verbally abusive and the other appeared to be concerned for Applicant's safety. Applicant was cooperative, and he was advised that due to liability issues he would be escorted to the hospital. The police report noted there was alcohol on the counter in Applicant's house and a substance on a plate that appeared to be crushed pills. None of it was confiscated or tested. Applicant does not know what was on the plate. He credibly testified that he has never used illegal drugs. He explained there were people in and out of his house that day. Applicant provided the hospital with a urine and blood sample. The results were not given to him. He was evaluated by a psychiatrist who apologized to him. Applicant was then released and took a taxi home. He admitted he was drinking alcohol and was probably intoxicated at the time of the incident, but does not remember if he had taken any medication. He denied he was suicidal or at risk.⁶

Applicant denied he abused the drugs prescribed to him. He provided his work with release forms to obtain any information available. After this incident, he continued to take the prescribed medication until he met with his psychologist shortly thereafter. She took him off the medication and told him to exercise, eat right, and get enough sleep. He has followed her directions and managed his anxiety.⁷

Applicant admitted he owes the debts in SOR ¶ 4.a (\$4,100 and \$8,959) for unpaid private student loans. He was paying these student loans for a period until his income was reduced due to lack of work. He also indicated he lost a lot of money through his divorce. He acknowledged these debts have not been paid. He does not

⁴ Tr. 37-50, 52, 56, 72-73.

⁵ Tr. 37-50; AE A.

⁶ Tr. 37-50, 53-55, 58-59; GE 2, 3.

⁷ Tr. 43-44, 50-51, 57-58.

currently have the resources to begin to repay these debts, but intends to when he can. He has communicated with the creditor, but is unable to make payments at this time.⁸

Applicant also has federal student loans. He estimated the total amount he owes for his federal student loans to be about \$96,000. They were in forbearance and then deferred for a period. His monthly statement shows his payment is past-due. He recently requested his federal student loans be deferred again. He is waiting for a response to his request.⁹ He stated that the student loans he has are all from law school. He paid his undergraduate student loans.¹⁰

Applicant credibly testified that he is not running from his debts, but his income has been inconsistent for the past ten years and he is hoping if he is employed full-time he will be able to resume payments. He explained he knows it looks like he is lazy, selfish, and unreliable, but he could not find a job when he finished school because he did not pass the bar exam. He then got a job and was doing okay financially until the economic downturn and he was laid off. He then went through a divorce. These factors impacted his ability to pay his debts.¹¹

Applicant admitted he has not filed his federal income tax returns for tax years 2011, 2012, 2013, or 2014. He explained he failed to file in 2011 because he moved during that year, and he was not organized. He indicated he is trying to correct his past tax problems. He did not know how much income he earned in 2014.¹²

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, 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

⁸ Tr. 61, 64, 67-69, 86, 88; GE 4, 6, 7. Apparently these loans (SOR ¶ 4.a) were for fees associated with taking a bar examination.

⁹ AE B, C. These loans were not alleged in the SOR and are not considered for disqualifying purposes, but will be considered when analyzing the whole-person.

¹⁰ Tr. 61-67.

¹¹ Tr. 69-75, 81-83.

¹² Tr. 76-81.

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. Such decisions entail a certain degree of legally permissible extrapolation of 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 G, Alcohol Consumption

AG ¶ 21 expresses the security concern for 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.

I have considered the following disqualifying condition for alcohol consumption under AG ¶ 22:

(a) alcohol-related incidents away from work, such as driving while 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 sick at work one day. He went home from work. He acknowledged he was going through a difficult time in his life. He spoke with his supervisor who misinterpreted their communication and contacted the police to do a welfare check on Applicant, which resulted in Applicant going to the hospital. Applicant acknowledged he was drinking alcohol at home that day. He does not recall if he had taken his prescribed drugs on that day. There is insufficient evidence to conclude his conduct rose to the level of an alcohol-related incident. Rather when the police arrived he cooperated, and they were compelled to have Applicant evaluated for safety and liability purposes. There is insufficient evidence to conclude Applicant's alcohol consumption is a security concern. I find the above disqualifying condition does not apply and find for Applicant under this guideline.

Guideline H, Drug Involvement

AG ¶ 24 expresses the security concern for 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.

I have considered the following disqualifying condition for drug involvement under AG ¶ 25:

(a) any drug abuse.

There is insufficient evidence to conclude Applicant abused prescription drugs. He was prescribed drugs by his primary care physician. There was no evidence he had used the drugs when his supervisor contacted the police in 2013 to do a welfare check. He provided a urine and blood sample at the hospital, the results of which are unknown. He was released after seeing a psychiatrist. There is no evidence of habitual abuse of prescription drugs or that such actions occurred over an extended period of time, as alleged. The government has not met their burden. I find the above disqualifying condition does not apply and find in favor of Applicant on this guideline.

Psychological Conditions

The security concern relating to the guideline for psychological conditions is set out in AG ¶ 27. It states:

Certain emotional, mental and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline. A duly qualified mental health professional (e.g. clinical psychologist or psychiatrist) employed by or acceptable to and approved by the U.S. Government, should be consulted when evaluating potentially disqualifying and mitigating information under this guideline. No negative inference concerning the standings in this Guideline may be raised on the basis of seeking mental health counseling.

I have considered the following disqualifying condition for psychological conditions under AG ¶ 28:

(a) behavior that casts doubt on an individual's judgment, reliability, or trustworthiness that is not covered under any other guideline, including but not limited to emotionally unstable, irresponsible, dysfunctional, violent, paranoid, or bizarre behavior.

Applicant readily admitted he was having a bad day when the police did a welfare check. There is no evidence that Applicant has an ongoing emotional, mental, or personality condition that can impair his judgment, reliability, or trustworthiness. There is no evidence he discontinued his prescribed medication without the consent of his doctor. His behavior did not rise to the level of a security concern. The government has not met their burden. I find the above disqualifying condition does not apply and find in favor of Applicant on this guideline.

Guideline F, Financial Considerations

The security concern 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.

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and the following three are potentially applicable:

(a) inability or unwillingness to satisfy debts;

(c) a history of not meeting financial obligations; and

(g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant has a delinquent private student loan that he is unable to pay at this time. He failed to timely file his federal income tax returns from 2011 through 2014. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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 is unable to pay his student loans at this time. He intends to do so in the future when his earnings increase. AG ¶ 20(a) does not apply because the debts are still owed. Applicant credibly testified that he paid his private student loans when he was earning more income, but due to reduced income and a divorce his finances were negatively affected. These were conditions beyond his control. Applicant failed to file his federal income tax returns for tax years 2011, 2012, 2013, and 2014. This was within his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant has paid his loans in the past, but is unable to do so at this time due to his decreased income. He did not abandon his obligation. He has communicated with the creditor about resolving the debt. I find he has acted responsibly regarding his student loans and AG ¶ 20(b) applies to that debt. However, he has not acted responsibly regarding filing his federal income tax returns. He failed to offer a reasonable explanation for failing to file the returns, which remain delinquent. AG ¶ 20(b) does not apply. There is no evidence Applicant has attended financial counseling or made a good-faith effort to resolve the problem. AG ¶¶ 20(c) and 20(d) do 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 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F, G, H, and I 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 37-year-old educated man. He went through a divorce and experienced periods of decreased earnings that impacted his finances. In May 2013 he had a stressful day, combined with a misinterpretation from his supervisor that resulted in a police welfare check, which escalated into unsubstantiated allegations. Those allegations are resolved in his favor. Although he experienced financial hardship, he has managed his finances and intends to resolve his student loans when he has more expendable income. Applicant failed to file his federal tax returns for four years. They remained unfiled at the time of his hearing. Applicant's conduct in failing to comply with his civic duty leaves me with questions and doubts about his eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant refuted the security concerns under Guideline G, alcohol consumption; Guideline H, drug involvement; and Guideline I, psychological conditions. He failed to mitigate the security concerns arising under Guideline F, financial considerations.

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 G:

FOR APPLICANT

Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline H:	FOR APPLICANT
Subparagraphs 2.a-2.b:	For Applicant
Paragraph 3, Guideline I:	FOR APPLICANT
Subparagraph 3.a:	For Applicant
Paragraph 4, Guideline F:	AGAINST APPLICANT
Subparagraph 4.a:	For Applicant
Subparagraph 4.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 a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge