



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



In the matter of:)
)
-----|) ISCR Case No. 07-09866
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Edmunds, Esquire, Department Counsel
For Applicant: *Pro Se*

June 23, 2008

Decision

CURRY, Marc E., Administrative Judge:

On, October 19, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations, Guideline J, criminal conduct, Guideline E, personal conduct, and Guideline G, alcohol consumption security concerns. 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on November 8, 2007. He did not specifically answer each allegation, nor did he state whether he sought a hearing or an administrative determination. Later, he submitted an undated, supplementary answer with responses to each individual allegation, and a request for an administrative determination. On January 21, 2008, department counsel prepared a File of Relevant

Material (FORM). Applicant received it on January 23, 2008, and did not reply. The case was assigned to me on May 27, 2008. I have reviewed the FORM, and have concluded that eligibility for access to classified information is denied.

Procedural Ruling

Department Counsel filed a motion to amend the SOR by withdrawing subparagraphs 2.g, 2.k, and 2.l, and amending subparagraphs 2.m, 3.a, and 4.a. I granted the motion. The amended subparagraphs read, as follows:

2.m. On or about April 22, 1997, you were arrested in City X and charged with Drinking in Public. You were found guilty and fined \$76.

3.a. That information as set forth in subparagraphs 2.a, 2.f, and 2.m, above.

4.a. That information as set forth in subparagraphs 2.a through 2.f, 2.h through 2.j, and 2.m through 2.q, above.

Findings of Fact

Applicant is a 39-year-old single man. Although the record evidence indicates he pays "child support/daycare" expenses, (See Item 9 at 6) the number of children he has is unclear, because he did not list any on his security clearance application. He earned an electronics degree from a technical school in 1988. Since 2005, he has worked for a defense contractor as an electronics technician.

Applicant has approximately \$11,900 of delinquent debt, as listed in SOR Paragraph 1. He owes approximately \$11,200 to credit card companies or banks. The remainder are either medical or utility bills. According to a 2007 budget, he has \$825 of monthly after-expense income, and \$5,000 in savings (Item 9 at 6).

Applicant admitted all of the delinquencies except SOR subparagraphs 1.a, 1.b, 1.f, 1.g, and 1.i. He provided no evidence that he has either made payment arrangements or satisfied the admitted delinquencies, nor has he provided evidence that he has either satisfied or disputed the controverted debts with the respective creditors.

In November 1991, Applicant was arrested and charged with disorderly conduct. The charges were later dropped (Item 10 at 2).

In November 1993, Applicant was arrested and charged with simple assault and carrying/displaying a firearm. He was found guilty of the assault charge and ordered to pay a fine (Item 10 at 2).

In September 1997, Applicant was arrested and charged with speeding. He was found guilty and ordered to pay a fine (Item 15).

In April 1997, Applicant was charged with drinking in public. He was found guilty and fined \$76 (Item 18).

In August 2000, Applicant was charged with careless operation of a motor vehicle. He was found guilty and ordered to pay a fine (Item 5).

In September 2001, Applicant was found guilty of speeding. Later, he was ordered to pay a fine (Items 5, 13).

In September 2003, Applicant was arrested and charged with careless operation of an automobile, and driving with an open container of beer in a motor vehicle. The court dismissed the careless operation charge, and he was found guilty of the alcohol-related charge (Items 5, 19).

In March 2004, Applicant was charged driving with an expired vehicle license, and no proof of insurance. He was found guilty, and sentenced to one day in jail, suspended (Item 12).

In December 2004, Applicant was cited and charged with careless operation of an automobile. He was found not guilty (Item 5).

In July 2005, Applicant was charged with speeding. He was found guilty and fined (Item 5).

In June 2007, he was charged with speeding and possessing an open container of alcohol. He was fined (Item 5).

In July 2007, he was stopped, and charged with speeding. He was found guilty and fined (Item 5).

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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, they are applied together with the factors listed in the adjudicative process. According to AG ¶ 2(c), the entire process is a 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. 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

Analysis

Guideline F, Financial Considerations

Under this guideline, “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” (AG ¶ 18). Applicant’s delinquent debt triggers the application of AG ¶ 19(a), “inability or unwillingness to satisfy debts,” AG ¶ 19(c), “a history of not meeting financial obligations,” and AG ¶ 19(e), “consistent spending beyond one’s means, which may be indicated by excessive indebtedness significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.”

I have considered the mitigating conditions, and concluded none apply. Despite having \$825 of monthly after-expense income, and \$5,000 in savings, Applicant has not provided any evidence that he has resolved his delinquent accounts. Similarly, he has taken no steps to contact the creditors of the disputed delinquencies. I conclude he has not mitigated the financial considerations security concern.

Guideline J, Criminal Conduct

Under this guideline, “criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness.” Here, Applicant has an extensive history of criminal infractions. He has been charged twice for criminal offenses the past year. AG ¶ 31(a), “a single serious crime or multiple lesser offenses,” applies.

I have considered the mitigating conditions and conclude none apply. Although the majority of the infractions were minor, automobile-related misdemeanors, and some were either dropped or resulted in not guilty findings, their repetitive nature raises serious questions about Applicant’s judgment, and his willingness to comply with laws, rules and regulations. Moreover, he has offered no evidence of remorse, reform, or rehabilitation. Applicant has failed to mitigate the criminal conduct security concern.

Guideline G, Alcohol Consumption

Three of Applicant's 13 arrests were, in part, alcohol-related. AG 21(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," applies.

The alcohol-related charges were minor and occurred over an 11-year period. There is no record evidence that they resulted in either any court-ordered alcohol evaluations, or any court orders to attend state-sponsored classes regarding responsible alcohol use. AG 23(a), "so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment," applies. Applicant has mitigated the alcohol consumption concern.

Guideline E, Personal Conduct

Under this guideline, "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" (AG ¶ 15). Although none of the disqualifying conditions explicitly apply, Applicant's conduct clearly involves questionable judgment and unwillingness to comply with rules and regulations. For the same reasons set forth in the criminal conduct section above, Applicant has not mitigated the personal conduct security concern.

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), as follows:

- (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) 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.

Applicant's extensive history of criminal and civil infractions, and his ongoing financial problems render him an unacceptable candidate for a security clearance. In reaching this decision, I have considered the whole person factors, particularly, its frequency and recency, the absence of rehabilitation, and the likelihood of continuation or recurrence. Clearance is denied.

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
Subparagraphs 1.a - 1.k:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a- 2.f:	Against Applicant
Subparagraph 2.g:	WITHDRAWN
Subparagraph 2.h - 2.j:	Against Applicant
Subparagraph 2.k - 2.l:	WITHDRAWN
Subparagraph 2.m - 2.q:	Against Applicant
Paragraph 3, Guideline G:	FOR APPLICANT
Subparagraph 3.a:	For Applicant
Paragraph 4, Guideline E:	AGAINST APPLICANT
Subparagraph 4.a:	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.

MARC E. CURRY
Administrative Judge