



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-14509
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Stephanie Hess, Esquire, Department Counsel
For Applicant: *Pro Se*

February 27, 2009

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on September 1, 2004. On September 10, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F, G and E for Applicant. 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 requested a hearing before an Administrative Judge. I received the case assignment on December 5, 2008. DOHA issued a notice of hearing on January 13, 2009, and I convened the hearing as scheduled on February 4, 2009. The Government offered Exhibits (GE 1-18), which were received without objection. Applicant testified on his own behalf. He did not submit any Exhibits at the hearing. I held the record open until February 13, 2009, so that Applicant could submit

documents. The submissions were timely received, marked as (AE A-C) and entered into the record. Department Counsel did not object to the documents. DOHA received the transcript on February 13, 2009. Based upon a review of the record, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, dated September 20, 2008, Applicant admitted the factual allegations in ¶¶ 2.b. and 2.c. of the SOR. He denied the other allegations, including ¶¶ 1.a-1.c. and ¶¶ 3a.-3.d of the SOR. He provided additional information to support his request for eligibility for a security clearance.

Applicant is a 31-year-old employee of a defense contractor. He graduated from high school in June 1995. He served in the United States Army (USA) from 1995 until 2005. He has worked for his current employer since 2005 (GE 1). Applicant is currently attending college classes toward his degree. Applicant held a security clearance during his military career (Tr. 23).

In 1997, Applicant received an Article 15 for a false report on a sensitive item (GE 14). The sensitive item was his protective mask in his carrier. He received a call from his warrant officer early in the day. Applicant believed he had his protective mask in his case. However, when an inspection was made in a few hours, the mask was not in the carrier (Tr. 26). The officer told him that he lied but Applicant denied lying. Applicant also reported that they did not get along (Tr. 26). The report reflects that no adverse action was recommended by the commander (GE 13). Applicant does not deny receiving the Article 15 but denies that he intentionally gave false information to his warrant officer.

In 1999, Applicant married. He and his wife separated shortly thereafter and they divorced in 2005. He is currently single and has no children (Tr. 22).

In September 2001, Applicant was issued an Article 15 and received administrative punishment, which included 45 days restriction and extra duty for 45 days (GE 11). This followed his arrest for a charge of indecent assault. Applicant explained that he denied this allegation for indecent assault because he believes the investigation was terminated because the victim had accused six other individuals of the same incident (Tr. 27). He stated he received this administrative punishment for disrespect. He claimed the FBI report was incorrect (GE 11). He believes the investigation was terminated (GE 12). He also understood that the case was dismissed (Tr. 27).

The SOR alleges three delinquent debts, including a vehicle repossession. The total amount of debt that Applicant owes is approximately \$16,000 (GE 3 and GE 4). The largest debt (\$10,743) is a vehicle repossession that occurred when Applicant was barred from the base for 10 months. He was not working and could not pay the car loan (Tr. 28).

Applicant initially denied owing the debts listed in the SOR. At the hearing, Applicant admitted the delinquent debt. Applicant has paid one account through debt consolidation ¶ 1.b (AE B). The other debts have not been paid.

Applicant obtained the services of a debt consolidation program last year for his other debts not included in the SOR. He paid \$535 each month (Tr. 29). He completed that plan (AE B). The debt in the SOR for the vehicle repossession is still unpaid (Tr. 31). Applicant thought that the debt consolidators tried to locate the account but the repossessioners would not work with them (Tr. 30). He is trying to track down the debt in 1.a for \$5,319 which has been sold several times. This account has been delinquent since 1998.

Applicant earns a good salary in his present position. He has discretionary income after his expenses. He is paying on his current car loan.

In April 2004, Applicant was arrested and charged with DUI. He was found guilty, sentenced to 10 days in jail (9 days suspended pending completion of DUI counseling, etc) and fined \$1,197. On or about November 4, 2004, the Court issued a warrant for his arrest and failure to appear with proof of completion of DUI counseling, and ordered him to serve an additional 9 days in jail (GE 6).

Applicant denied this allegation in his answer to the SOR, but at the hearing he admitted to the arrest and charge for DUI. He insisted that he did not know about the failure to appear. He claimed he did not receive anything that instructed him to report back. He completed the DUI counseling and believed that the certificate of completion was mailed to the correct party (Tr. 33). Applicant emphasized that his was a mistake in judgment by driving (GE 2).

On July 2, 2004, Applicant was arrested and charged with DUI and Reckless Driving. On October 13, 2004, he was found guilty of Reckless Driving, sentenced to 10 days in jail (10 days suspended), fined \$455, and placed on 12 months unsupervised probation (GE 7 and GE 8).

Applicant admitted that he was arrested, but denied that he was intoxicated (Tr. 33). He explained that the officer did not show him the Breathalyzer report. The police officer had stopped his vehicle because it was drifting from the lane delineation line and the bike lane to the road edge. Applicant admitted that he had two beers earlier in the evening (Tr. 36). He is still adamant that he was wrongfully accused of the DUI because he was seen leaving a bar after picking up some coworkers (GE 2).

On May 19, 2005, Applicant was arrested and charged with DUI. On August 17, 2005, he was found guilty of DUI, sentenced to 10 days in jail (9 days suspended) and fined \$1,272 (GE 10). Applicant admitted this allegation. He explained that he went to a bar after a day of being "belittled at work." He reported that the bartender gave him more alcohol than he realized. He explained that the alcohol (2 drinks) contained the alcohol of six or seven drinks (GE 2).

On or about June 30, 2005, Applicant was discharged from the Army due to misconduct (the basis was the 2005 DUI). He received a discharge under other than honorable conditions (GE 15 and GE 16). Applicant denied this allegation in the SOR but admitted at the hearing. He was successful in having his discharge upgraded. The discharge was changed on April 2008 after an application, dated March 2007. Applicant now has a discharge "Under Honorable Conditions" (General) AE A).

Applicant completed interrogatories in April 2008. He admits to currently drinking but rarely (Tr. 37). He estimates that he drinks two beers a month. The alcohol makes him drowsy (GE 2). He does not drink to the point of intoxication and he does not drink alcohol prior to or during work hours. He still disputes that he was intoxicated on July 2, 2004. There are inconsistencies in Applicant's description of events and the officer's reports.

Applicant is a team player in his current position. He has shown dedication and professionalism in the workplace. He is punctual and works very hard. He is highly recommended for a security clearance by his manager. His manager knows about Applicant's history and believes there is no reason he should not have a security clearance (AE C).

Applicant's evaluations rate him as "far exceeds" or "exceeds most" in all categories. He contributes to a high customer satisfaction and effective team performance. He has an in-depth knowledge of the mission and technical performance.

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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2, 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. Likewise, I have avoided drawing 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, 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.

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 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.

The guideline notes several conditions that could raise security concerns. Under AG & 19(a), an inability or unwillingness to satisfy debts^o is potentially disqualifying. Similarly under AG & 19©, Aa history of not meeting financial obligations^o may raise security concerns. Applicant accumulated delinquent debts on several accounts, including a vehicle repossession and did not meet some of his financial obligations from 1998 until the present time. His credit reports confirm the debts. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where 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. Applicant accumulated some delinquent debt and the debt has remained for a period of time. He paid one account listed in the SOR (\$1,823) through debt consolidation but this does not remove security concerns or doubts about his current reliability, trustworthiness, and good judgment. This potentially mitigating condition partially applies.

Under AG & 20(b), it may be mitigating where 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. Applicant has been steadily employed since leaving the military. He did experience separation and divorce but the debt does not stem from that situation. Applicant was unemployed for a period and his car was repossessed. Applicant was not as aggressive as he should have been in initially addressing or resolving his delinquent debts. I find this potentially mitigating condition partially applies.

Evidence that 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 is potentially mitigating under AG & 20(c). Similarly, AG & 20(d) applies where the evidence shows the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. Applicant paid one small account. I find his efforts are insufficient to carry his burden in this case. I conclude this potentially mitigating condition partially applies.

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."

AG ¶ 22 describes conditions that could raise a security concern and may be disqualifying, "(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," and "22(c) "habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent."

In this case, Applicant has three arrests for DUI. The first DUI was April 28, 2004. After that, on July 2, 2004, Applicant was arrested for DUI and reckless driving. On May 19, 2005, Applicant was found guilty of DUI. Thus, AG ¶¶ 22 (a) applies.

AG ¶ 23 provides conditions that could mitigate security concerns:

(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;

(b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser);

© the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress; and,

(d) the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Applicant had three DUIs in a short period of time in 2004, and then again a year later in 2005. Applicant completed an alcohol education program. He was not diagnosed as an alcohol dependent or as an abuser. He never received an evaluation and was credible in that he now drinks rarely. Applicant has a very good work record with his current employer. He is recommended for his fine work. Applicant does not want alcohol to ruin his life. He values his work and now admits that he made mistakes. His drinking is moderate (2 beers monthly). The alcohol-related incidents are almost four years old. Applicant has mitigated the alcohol consumption concerns under AG ¶¶ 23(a), and (b).

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

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 cooperate with the security clearance process.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 16(d), "credible adverse information that is not explicitly covered under any other guideline, and may not be sufficient by itself for an adverse determination, but which when combined with all available information 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" is potentially disqualifying.

Applicant denied the underlying conduct in each of the allegations under personal conduct. He admitted that he did receive the April 23, 1997, Article 15 for a false report on a sensitive item. He also admitted at the hearing that he received an Article 15 on September 23, 2001 but that it was not for indecent assault. He acknowledged the administrative punishment that he received for these two incidents. Applicant was initially discharged from the Army in June 2005 due to misconduct under other than honorable conditions.

As for the cross allegations concerning his alcohol consumption, Applicant initially denied the three incidents, but made clear at the hearing that he admitted the actual incidents but denied the underlying issue of intoxication in allegation 2.b. Applicant acknowledged at the hearing that he made mistakes in judgment by driving on the two occasions.

Applicant's Article 15s are not recent. In fact one is more than ten years old. He has had an upgrade to his discharge. He has had no more alcohol-related incidents. His discharge has been changed. I find that under mitigating condition 17© "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" that Applicant has mitigated the personal conduct concerns.

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) 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 common sense 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 and conclude they are not sufficient to overcome the government’s case. Applicant served in the USA for many years and held a security clearance. While in the military he had some incidents that resulted in Article 15 administrative punishments. He was discharged in 2005 for misconduct (based on the alcohol incident) under other than honorable conditions.

Applicant was charged with three DUIs (2004-2005). He admitted his mistakes in judgment, except for the second one. He is adamant that he was not intoxicated. He has not had any other alcohol-related incidents. He drinks rarely. He completed his alcohol education and unsupervised probation.

Applicant has a history of delinquent debts. He paid one debt alleged in the SOR through a debt consolidation plan. He still has \$16,000 in delinquent debt. The largest is for the vehicle repossession. He is attempting to track down the collection company. He did have some unemployment when he was barred from the base, but he has not been aggressive with his delinquent debts. He is working steadily and is highly recommended for a security clearance. However, at this time, Applicant has not met his burden of proof to overcome the government’s case.

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 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 F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Paragraph 2, Guideline G:	FOR APPLICANT

Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant

Paragraph 3, Guideline E:	FOR APPLICANT
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Subparagraph 3.a:	For Applicant
Subparagraph 3.b:	For Applicant
Subparagraph 3.c:	For Applicant
Subparagraph 3.d:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

NOREEN A. LYNCH
Administrative Judge