



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



In the matter of:)
)
) ISCR Case No. 07-16206
)
)
Applicant for Security Clearance)

Appearances

For Government: D. Michael Lyles, Esquire, Department Counsel

For Applicant: *Pro se*

November 9, 2009

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the case file, pleadings, and exhibits, I conclude that Applicant has not mitigated the security concerns raised under the guidelines for alcohol consumption, criminal conduct, and personal conduct. Accordingly, his request for a security clearance is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP), signed on December 8, 2006, to request a security clearance required as part of his employment with a defense contractor. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding¹ that it is clearly consistent with the national interest to grant Applicant's request.

¹ Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended. Adjudication of this case is controlled by the Revised Adjudicative Guidelines, approved by the President on December 29, 2005, which were implemented by the Department of Defense on September 1, 2006. The Revised Adjudicative Guidelines supersede the guidelines listed in Enclosure 2 to the

On April 22, 2008, DOHA issued to Applicant a Statement of Reasons (SOR) that specified the basis for its decision: security concerns addressed in the Directive under Guidelines J (Criminal Conduct), G (Alcohol Consumption), and F (Financial Considerations) of the Revised Adjudicative Guidelines (AG).

Applicant received the SOR on May 5, 2008. He signed a notarized Answer on May 22, 2008, and requested a decision without a hearing. In his Answer, Applicant admitted all the allegations in the SOR under Guidelines J and G, with explanations. Under Guideline F, he admitted all allegations except for allegations 3.i. through 3.o. On July 7, 2008, DOHA Department Counsel submitted a file of relevant materials (FORM) in support of the government's preliminary decision to deny Applicant's request to be granted a security clearance. The FORM contained nine documents, identified as Items 1 through 9.

The FORM and attached Items were forwarded to Applicant on July 9, 2008, and he received the package on July 21, 2008. Applicant was given 30 days from the date he received the FORM to respond. Applicant provided a timely response dated August 19, 2008. The case was assigned to an administrative judge on September 2, 2008. However, as Applicant was working in a state that was approximately 2,000 miles from his home, he requested an extension until he returned home and could gather and submit relevant evidence. Following receipt of Applicant's response, dated October 12, 2009, the case was assigned to me on November 3, 2009, for an administrative decision based on the record.

Findings of Fact

Applicant's admissions in response to the SOR are admitted as fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the FORM, I make the following additional findings of fact.

Applicant, 51 years old, is single and has no children. He earned college credits between 1996 and 1997, but did not complete a degree. He worked in his father's wood working business for many years, but later he was unemployed from May 2002 to April 2003. He suffered from a medical condition from 2002 to 2006, which at times affected his ability to work. In 2002, he had surgery to correct it. He was employed as an electrician from December 2003 to June 2005, but was unemployed for the next four months. He has been employed by a federal contractor as a technician since October 2005 (Item 4).

At about 18 years of age, Applicant began to consume alcohol. As of the date of his subject interview in July 2007, Applicant stated that he becomes intoxicated after drinking 15 beers, and that happens about once per month. He did not believe that his drinking had any effect on his work or home life, nor that his alcohol use was a problem.

Directive, and they apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

Applicant has had two alcohol-related arrests. In 1998, he was driving home from a casino and was stopped by a police officer. Applicant was arrested and charged after he failed the breathalyzer test. He was found guilty of Driving Under the Influence of Alcohol (DUI). His license was suspended, he was fined, and ordered to complete an alcohol education program. Applicant met the requirements of his sentence. He was also charged with Driving with a Suspended License in August 2000, but the record is silent as to whether this was an alcohol-related offense. In November 2005, Applicant drank alcohol while visiting friends, and then drove home. He was stopped and subsequently arrested on a charge of DUI. In July 2006, he pled guilty. He was fined, sentenced to one-year probation, and ordered to attend the same alcohol education program. Applicant completed the program. His probation ended in mid-2007.

In his subject interview in July 2007, he stated that he does intend to continue consuming alcohol in moderation in the future, but he does not drive after drinking alcohol. As of March 2008, he stated that he no longer drinks to intoxication, and consumes “daily—1 to 3 beers in the evening after work and 6 beers on Saturday or Sunday.” (Items 5, 6).

Between 1980 and 1986, when Applicant was 22 to 28 years old, his illegal drug involvement resulted in conviction on criminal charges on five occasions. Applicant admitted to the following (Items 6, 7):

- In April 1980, Applicant was charged with five marijuana-related charges including possession of marijuana with intent to distribute and conspiracy. He was found guilty of possession of marijuana and served 5.5 months incarceration;
- In June 1981, he found guilty of possession of marijuana and sentenced to serve 90 days;
- In July 1981, he was charged with possession of 20 pounds of marijuana and was found guilty of possession of a controlled substance with intent to deliver. He was sentenced to five years confinement, with two years suspended;
- In February 1985, Applicant was charged with possession of cocaine with intent to distribute and convicted felon in possession of a firearm. He was found guilty of the first charge and sentenced to ten years (suspended). He served approximately five months incarceration, and three years probation;
- In October 1986, Applicant was found guilty of possession of cocaine and sentenced to 10 years confinement. The record is silent as to the amount of time he served.

Applicant has numerous delinquent debts totaling approximately \$36,000. In his Answer, he notes that those alleged in the SOR at ¶¶ 1.a. through 1.k. are student loans, which total \$34,300. He states that he does not recognize the four remaining debts, allegations 1.l. through 1.o., which total \$1,690. Allegation 1.l. is a state tax lien, which was filed in 1989. Applicant states that he has tried to pay it, but was informed that “no record exists.” He does not recognize the debts at 1.m. and 1.n., which became delinquent in 2006, but plans to research them. The debt at allegation 1.o. became delinquent in 2000. As mitigation, Applicant contends that he was planning to consolidate his student loans in October 2007, but was laid off from his job until February 2008. The record contains no evidence of payments, but he states that he intends to resolve these loans, if he is granted a security clearance. (Items 3, 8, 9).

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the Revised Adjudicative Guidelines (AG).² Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the Guidelines, commonly referred to as the “whole person” concept. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guidelines G, J, and F.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest³ for an applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the government’s case.

Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.⁴ A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or his own. The “clearly consistent with the national interest” standard

² Directive. 6.3.

³ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁴ See *Egan*, 484 U.S. at 528, 531.

compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the government.⁵

Analysis

Guideline G, Alcohol Consumption

The security concern about alcohol consumption is that:

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 ¶ 21).

Available information raises two disqualifying conditions. 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*) applies based on Applicant's arrests for DUI in 1998 and 2005. AG ¶ 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*) also applies. Applicant's long history of alcohol use, sometimes to the point of intoxication, as well as the poor judgment he displayed by driving after becoming intoxicated.

The guideline also includes factors that can mitigate otherwise disqualifying conditions. The relevant factor, 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*), does not apply. Applicant's alcohol use is frequent, and it is not an unusual occurrence, as he currently drinks alcohol daily. Given the fact that he has had alcohol-related arrests, and continues to drink alcohol, I cannot conclude that his negative alcohol-related conduct will not recur.

Guideline J, Criminal Conduct

The security concern pertaining to criminal conduct is that:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations. (AG ¶ 30).

Disqualifying condition AG ¶ 31(a) (*a single serious crime or multiple lesser offenses*) and AG ¶ 31(c) (*allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted*) apply. Applicant has a history of criminal conduct going back to 1980. Applicant's offenses were serious, and he has received sentences varying from five to ten years

⁵ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

incarceration. Although his first conviction occurred when he was fairly young, his most recent conviction was in 2005, when he was 47 years old.

Guideline J includes two relevant mitigating conditions: AG ¶ 32(a) (*so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment*), and AG ¶ 32(d) (*there is evidence of successful rehabilitation, including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement*). There is no evidence that Applicant's serious drug-related criminal conduct of the 1980s has occurred more recently, which allows some mitigation under AG ¶ 32(d). However, as Applicant continues to drink alcohol, his alcohol-related criminal conduct may well recur in the future. His continuing alcohol consumption also raises doubts about his current good judgment. In light of these facts, I find against Applicant on Guideline J.

Guideline F, Financial Considerations

AG ¶18 expresses the security concern pertaining to 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 over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

The record supports application of two disqualifying conditions. AG ¶19(a) (*inability or unwillingness to satisfy debts*) and AG ¶19(c) (*a history of not meeting financial obligations*). Applicant's debts started to become delinquent between 2000 and 2006, and still appear in his 2008 credit bureau report. Applicant has allowed delinquencies to accrue to the point where he carries a significant debt load, which he has allowed to remain unresolved. Both disqualifying conditions apply.

The financial considerations guideline also includes factors that can mitigate disqualifying conditions. Four mitigating conditions are relevant here:

AG ¶20(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;

AG ¶20(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;

AG ¶20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶20(e): the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue;

Applicant's delinquencies are not in the distant past, as they remain unpaid. AG ¶20(a) does not apply.

The key element in mitigating condition AG ¶20(b) is that the factors that caused the financial problems were beyond the Applicant's control. Applicant did have a year of unemployment in 2002, and four months of unemployment in mid-2005. However, he has been working steadily since 2005, and his unemployment is far enough in the past that it would not affect his current ability to deal with his debts. Yet the record contains no evidence of efforts made to resolve his debts during in the past four years while he was employed. Neither mitigating condition AG ¶20(b) nor AG ¶30(d) can be applied.

Finally, AG ¶20(e) also does not apply. Although Applicant claims that he does not recognize three debts, there is no evidence that he has taken action to dispute them with the credit reporting agencies or to rectify his credit report.

Whole Person Concept

Under the whole person concept, an administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. I have evaluated the facts presented and have applied the appropriate adjudicative factors under the cited guidelines. I have also reviewed the record before me in the context of the whole-person factors listed in 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept. Under each guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant is a mature adult of 51 years. He has a history of criminal conduct from 1980 to 1986, when he was in his 20s. It is to Applicant's credit that there has been no drug-related criminal conduct since that time. However, Applicant has had a recurrence of criminal conduct with alcohol-related convictions in 1998 and 2005. He continues to drink alcohol, which, in light of these convictions, raises questions as to his good judgment. Financially, Applicant carries a debt load of approximately \$36,000, mostly attributable to student loans. While his attendance at college is certainly commendable, Applicant has provided no evidence that he has made any effort to pay his student loans or to establish a plan to do so. He does not recognize four other alleged debts, but has not contacted the credit reporting agencies to dispute them.

For all these reasons, I conclude Applicant has not demonstrated the good judgment and reliability required in those who seek access to classified information. A fair and commonsense assessment of the available information bearing on Applicant's suitability for a security clearance shows he has not satisfied the doubts raised by his conduct. Such doubts must be resolved in favor of the government.

Formal Findings

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1, Guideline J:	AGAINST Applicant
Subparagraph 1.a. – 1.h.	Against Applicant
Paragraph 2, Guideline G:	AGAINST Applicant
Subparagraphs 2.a. - 2.c.	Against Applicant
Paragraph 3, Guideline F:	AGAINST Applicant
Subparagraph 3.a. – 3.o.	Against Applicant

Conclusion

In light of the foregoing, it is not clearly consistent with the national interest to allow Applicant access to classified information. Applicant's request for a security clearance is denied.

RITA C. O'BRIEN
Administrative Judge