



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



In the matter of:)
)
) ISCR Case No. 07-18031
)
)
Applicant for Security Clearance)

Appearances

For Government: Nichole Noel, Esq., Department Counsel
For Applicant: *Pro Se*

October 29, 2008

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant failed to mitigate the security concerns raised by his financial issues and drug use while holding a security clearance. Eligibility for access to classified information is denied.

On July 16, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline 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 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 in writing on August 11, 2008, and requested a hearing before an Administrative Judge. The case was assigned to me on September 18, 2008. DOHA issued a notice of hearing on September 22, 2008. I convened the

hearing as scheduled on October 8, 2008. The Government offered Exhibits (GE) 1 through 7, which were received without objection. Applicant testified on his own behalf but did not submit any documentary evidence. DOHA received the transcript of the hearing (Tr.) on October 16, 2008.

Procedural and Evidentiary Rulings

Notice

I advised Applicant of his right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing. Applicant affirmatively waived his right to 15 days notice.

Motion to Amend SOR

Department Counsel moved to amend the SOR by adding three allegations under Guideline H, Drug Involvement, as follows:

- 2.a. Between 1984 and March 1999, you used marijuana, cocaine, hashish, and LSD with varying frequency.
- 2.b. Between March 1999 and April 2008, you used marijuana with varying frequency.
- 2.c. You used illegal drugs while holding a security clearance.

Applicant did not object to the amendment and it was granted. Applicant was asked if he desired additional time to address the amendment. He affirmatively waived his right to additional time and stated that he wanted the hearing to proceed that day.

Findings of Fact

Applicant is a 47-year-old employee of a defense contractor. He has a bachelor of science degree in aerospace engineering. Applicant was married from 1995 until his divorce in 2005. He has two children, ages 13 and 12. He and his former wife have joint custody of the children.¹

Applicant worked as an aerospace engineer for the U.S. military from 1984 to 2000. He had a security clearance during his entire employment with the military. The base where he worked closed in 2000, and his position moved to another state under the Base Realignment and Closure (BRAC) process. Applicant and his wife decided not to move to the other state. He started working with computers several years earlier and the internet was increasing in popularity. He also admitted that he had “gotten a little bit tired of engineering.” He decided to open his own one-man company developing web sites.²

¹ Tr. at 34; GE 1, 2.

² Tr. at 25-28, 37; GE 1, 2.

Applicant tried to make the company work, but it did not have enough business and he started running low on money. He worked as a programmer for a company for about three months in 2002, while attempting to maintain the business. By 2003, the company was generating almost no money. His wife left him in 2003, which further decimated his financial situation. He was left with the children and little income. His company had some business in 2004 and early 2005, but not enough to sustain it. He finally closed the company in 2005, and moved with the children to the state where his family lived. He did not have permission from the court to move his children out of state. After two months he was ordered back to the state that he had left. He and the children lived in a motel for about three months because he was unable to rent a house or apartment. He started working again in 2005, and was able to rent a home. He changed jobs several times and had additional unemployment until he started work with his current employer in about May 2006.³

The SOR lists seven debts totaling approximately \$19,115. Applicant admitted to owing all the debts in the SOR. Applicant has spent the last three years attempting to get back on his feet. Because of the traumatic effects of being essentially out of work and close to being homeless, he stated that until he has banked six months or so of salary to preclude that from happening again, he is “disinclined to pay [his] creditors.” He indicated that he has about two months saved, or about \$3,500. He has not received financial counseling.⁴

Applicant submitted a Questionnaire for Sensitive Positions (SF 86), certified as true on January 10, 2007. Question 24A asked about any illegal drug use during the previous seven years. He listed one use of marijuana in February 2004.⁵

Applicant was interviewed by an investigator from the Office of Personnel Management (OPM) for his background investigation on September 20, 2007. The interview was summarized in a Report of Investigation (ROI). Applicant’s delinquent debts were discussed. There is no indication that his drug use was discussed.⁶

Applicant submitted a Questionnaire for National Security Positions (SF 86), on April 3, 2008. Question 24a asked about any illegal drug use during the previous seven years. Question 24b asked whether he ever used a controlled substance while holding certain positions or while holding a security clearance. He answered “yes” to both questions. He wrote that he used marijuana, cocaine, hashish, and LSD many times between 1984 and March 1999, and marijuana five to ten times between March 1999 and April 2008. Applicant testified that he last used any illegal drugs in February 2004, when he smoked marijuana. He admitted that he held a security clearance during his drug use from 1984 through 2000. He categorized his drug use on the questionnaire

³ Tr. at 28-31, 35-37; GE 1, 2, 4, 5.

⁴ Tr. at 31, 48-49; Applicant’s response to SOR; GE 4, 5.

⁵ GE 2.

⁶ GE 5.

into two periods because March 1999 was when he last used any drug other than marijuana. He continued to sporadically use marijuana. He put April 2008, as the end date of his marijuana use because that is when he submitted the application. He stated he has no intent to use illegal drugs in the future. After considering all the evidence, I accept Applicant's testimony as credible and find that he has not used illegal drugs since 2004.⁷

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 to be 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, Administrative Judges apply the guidelines 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(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, 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 the 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

⁷ Tr. at 31, 38-43; GE 1.

permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that adverse 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. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts and was unable to pay his obligations for a period of time. The evidence is sufficient to raise AG ¶¶ 19(a) and (c).

Four Financial Considerations Mitigating Conditions under AG ¶¶ 20(a)-(d) 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 has not made payments on any of the debts alleged in the SOR. AG ¶ 20(a) is not applicable. He attributed his financial problems to the failure of his business, unemployment, under-employment, and his separation and divorce. These are conditions that were largely beyond his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant has been working consistently for more than two years and he has not made any effort to pay his delinquent debts. His goal to save six months of salary is laudable, but not at the expense of his creditors. There is insufficient information for a finding that he has acted responsibly under the circumstances. AG ¶ 20(b) is partially applicable.

Applicant has not received financial counseling. There are not clear indications that the problem is being resolved or is under control. AG ¶ 20(c) is not applicable. He has not made a good-faith effort to repay overdue creditors or otherwise resolve debts. AG ¶ 20(d) is not applicable.

Guideline H, Drug Involvement

The security concern relating to the guideline for Drug Involvement is set out in AG ¶ 24:

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.

Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

The guideline notes several conditions that could raise security concerns under AG ¶ 25. Three are potentially applicable in this case:

(a) any drug abuse;

(c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and

(g) any illegal drug use after being granted a clearance.

Applicant's drug possession⁸ and use are sufficient to raise AG ¶¶ 25(a) and (c) as disqualifying conditions. AG ¶ 25(g) is also applicable because he held a security clearance for many years while using illegal drugs.

Two Drug Involvement Mitigating Conditions under AG ¶ 26 are potentially applicable:

(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; and

(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;
- (4) a signed statement of intent with automatic revocation of clearance for any violation.

Applicant used marijuana, cocaine, hashish, and LSD many times between 1984 and March 1999, while holding a security clearance. He continued to use marijuana sporadically until 2004. He has not used illegal drugs in more than four years and stated he does not intend to use any illegal drugs in the future. His abstinence since 2004 has demonstrated his intent not to abuse any drugs in the future. AG ¶ 26(b) is applicable. He also receives some credit under AG ¶ 26(a). However, his drug use while holding a security clearance is particularly indicative of poor judgment and continues to cast doubt on his current reliability, trustworthiness, and good judgment.

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

⁸ Drugs must be possessed in order to be used.

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. Applicant attempted to start his own company after his long-time government job was lost to BRAC. The company was unsuccessful and he had long periods of little to no income. His finances were further exacerbated by his separation and divorce. Applicant has been steadily employed for more than two years and has made no effort to pay his creditors and will not begin to do so until he has saved six months salary. He used marijuana, cocaine, hashish, and LSD many times between 1984 and March 1999, and occasionally smoked marijuana until 2004. His abstinence since 2004, allays many of the security concerns about current drug use, but does little to alleviate the serious concerns about his judgment generated by his drug use while holding a security clearance. His finances and judgment remain as 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 has not mitigated the security concerns arising from his financial issues and drug use while holding a security clearance.

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:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant

Conclusion

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

Edward W. Loughran
Administrative Judge