



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



In the matter of:)
))
) ISCR Case No. 08-00510
))
))
Applicant for Security Clearance)

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: *Pro Se*

December 30, 2008

Decision

DAM, Shari, Administrative Judge:

Applicant failed to rebut or mitigate the Government's security concerns raised under Guidelines F (Financial Considerations), H (Drug Involvement) and J (Criminal Conduct). His eligibility for a security clearance is denied.

On August 17, 2007, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On May 29, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under the guidelines for Financial Considerations, Drug Involvement and Criminal Conduct. 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.

On July 7, 2008, Applicant answered the SOR in writing and elected to have the case decided on the written record in lieu of a hearing. On September 17, 2008, Department Counsel prepared a File of Relevant Material (FORM), containing seven Items, and mailed Applicant a complete copy. Applicant signed the document acknowledging receipt of his copy of the FORM on September 29, 2008, and returned it to DOHA. He provided no further response to the FORM within the 30-day period he was given to do so, did not request additional time to respond, and made no objection to consideration of any evidence submitted by Department Counsel. I received the case assignment on December 12, 2008.

Findings of Fact

In his answer, Applicant admitted all factual allegations contained in Paragraph 1 of the SOR, except those contained in ¶ 1.g and ¶ 1.i that he denied. He admitted all allegations contained in Paragraphs 2 and 3 of the SOR. All admissions are incorporated into the findings herein.

Applicant is 32 years old and recently divorced from his second wife. He has a ten-year-old son. In March 2007, he began working as a customer service representative for a defense contractor. Prior to this position, he worked for other federal contractors. In August 2007, he submitted an e-QIP. (Item 5.)

In April 2008, Applicant completed a set of Interrogatories relating to his finances and drug use. He attributed his financial problems to medical expenses related to a neck injury and his recent divorce from his second wife. He noted that "I intend to make arrangements for payment on all debts." (Item 6 at 44.) The May 2008 SOR alleged that he has nine delinquent debts, totaling \$24,006. According to a September 2007 credit bureau report (CBR), one of the debts, a tax lien, was filed in 2002. He admitted that he owed all but \$13,456 of the alleged debts, specifically denying the tax lien for \$465 and a credit union account of \$13,000. Said CBR notes that the tax lien is outstanding, but the credit union debt is paid. (Item 7.) He did not provide any information regarding the resolution of the remaining \$11,000 of delinquent debt or the tax lien.

In his answer to the SOR, Applicant admitted that he used marijuana on a regular basis from April 2001 to September 15, 2007, and used cocaine on a regular basis from mid-2000 to March 2001. (Item 4.) He stopped using marijuana after his second arrest for possession of it in September 2007. He was previously arrested for possession of some other type of controlled substance in March 2001 and in April 2001 for possession of marijuana.¹ (Item 6 at 39.) He pled guilty to the April 2001 charge and was sentenced to pay a fine. He was sentenced to pay a \$589 fine on the September 2007 charge.

As of February 2007, Applicant terminated his relationship with those friends with whom he engaged in illegal drug abuse, and later his second wife, who he said is an "addict and is a bad influence on me and my child." (Item 6 at 40.) There is no evidence

¹ The drug charges, along with a domestic abuse charge, filed in March 2001, were entered *nolle prosequi by the State*.

that he participated in any substance abuse treatment for either his cocaine or marijuana abuse. He acknowledged that his employer utilizes a drug screening program, although he has never been tested. (*Id.* at 40.) “Since 9/15/07, I realize, understand, and vow never again to do drugs or be associated with people, events or any circumstances that may be remotely associated with drugs. I’m very, very, sorry.” (*Id.* at 42.)

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 commonsense decision. According to AG ¶¶ 2(a) and 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 “Any 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 and has the ultimate burden of persuasion as to obtaining a favorable security decision.” 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.”

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.

Analysis

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.

AG ¶ 19 describes two conditions that could raise a security concern and may be disqualifying in this case:

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

Applicant began accumulating a significant amount of delinquent debt that he has been unable or unwilling to manage or resolve since 2002. The evidence is sufficient to raise these two potentially disqualifying conditions.

After the Government produced substantial evidence of those disqualifications, the burden shifted to Applicant to produce evidence and prove mitigation. AG ¶ 20 provides conditions that could mitigate security concerns raised under this guideline:

- (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;

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

(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; and,

(f) the affluence resulted from a legal source of income.

Other than providing evidence of the resolution of the debt alleged in SOR ¶ 1.i, Applicant did not submit evidence to trigger the application of any of the six mitigating conditions to the other debts. The financial problems are on-going, such that AG ¶ 20(a) cannot apply. Although there is some evidence that the debts may be attributable to medical expenses and a divorce, he did not submit evidence to demonstrate that he acted financially responsible under those circumstances, as required under AG ¶ 20(b). Applicant has not received credit counseling or initiated a good-faith effort to repay or resolve his debts, nor shown that his finances are under control, all of which are necessary to trigger the application of AG ¶ 20(c) and AG ¶ 20(d). Nor is there any evidence to support the application of AG ¶ 20(e) or AG ¶ 20(f).

Guideline H, Drug Involvement

The security concern pertaining to 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.

(a) Drugs are defined as mood and behavior altering substances, and include:

(1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and

(2) inhalants and other similar substances;

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

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying:

- (a) any drug abuse (see above definition);
- (b) testing positive for illegal drug use;
- (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;
- (d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence;
- (e) evaluation of drug abuse or drug dependence by a licensed clinical social worker who, is a staff member of a recognized drug treatment program;
- (f) failure to successfully complete a drug treatment program prescribed by a duly qualified medical professional;
- (g) any illegal drug use after being granted a security clearance; and,
- (h) expressed intent to continue illegal drug use, or failure to clearly and convincingly commit to discontinue drug use.

Based on Applicant's admissions that he regularly used marijuana from April 2001 to September 2007 and cocaine from mid-2000 to March 2001, the Government raised a disqualification under AG ¶ 25(a).

AG ¶ 26 lists four conditions that could mitigate security concerns arising from illegal drug use:

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

(c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and

(d) satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Based on an evaluation of the record evidence as a whole, I conclude that AG ¶ 26(a) does not apply. Applicant used marijuana regularly from April 2001 until September 2007, the last incident being about a year ago. Given his 6-year history of marijuana use, coupled with his previous year of cocaine use, his behavior does cast doubt on his current trustworthiness and good judgment.

Applicant stated that since February 2007 he no longer associates with friends or his ex-wife who used illegal drugs. As those assertions are not corroborated by any independent evidence, only limited application of AG ¶ 26(b) is warranted. The record does not contain evidence to support the application of AG ¶ 26(c) or AG ¶ 26(d). Applicant has not sought professional treatment, an evaluation or received a favorable prognosis from a qualified medical professional.

Guideline J, Criminal Conduct

AG ¶ 30 expresses the security concern pertaining to criminal conduct:

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 ¶ 31 describes two conditions that could raise a security concern and may be disqualifying in this instance:

(a) a single serious crime or multiple lesser offenses; and

(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

Applicant repeatedly engaged in illegal substance abuse over a period of more than six years and was arrested on three separate occasions for illegally possessing drugs, resulting in two convictions. The Government raised the above two disqualifications.

AG ¶ 32 provides conditions that could mitigate security concerns raised under this guideline:

(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;

(b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(c) evidence that the person did not commit the offense; and,

(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.

Applicant admitted that the last time he used marijuana was in September 2007, and the last time he used cocaine was in April 2001. Given that the last time he used marijuana was about a year ago and that he did not submit any independent evidence to verify his assertions, AG ¶ 32(a) is not applicable. Applicant was not coerced into using illegal drugs, so AG ¶ 32(b) has no application. AG ¶ 32(c) does not apply because Applicant's admissions and criminal record support the allegations regarding his illegal drug offenses. Despite a long history of serious substance abuse, Applicant has not sought any form of professional substance abuse rehabilitation, which would be pertinent to the allegations raised under this guideline and Guideline H. Although he stated remorse over his previous conduct, it is insufficient to outweigh his history of criminal conduct considering that he used illegal drugs while working for the federal government that has a drug-free policy, and after completing a security clearance application. AG ¶ 32(d) has no application.

Whole Person Concept

In addition to evaluating the disqualifying and mitigating conditions under each guideline, the adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at a balanced decision. The essence of scrutinizing all appropriate variables in a case is referred to as the "whole person" analysis. In evaluating the conduct of the applicant, 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.

According to 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. Applicant is a 32-year-old man, who began using marijuana in 2001 and continued using it until September 2007, after he completed an e-QIP that inquires into ones illegal drug abuse. In addition, he also used cocaine from mid-2000 to March 2001. While I find his candid admissions of his drug use noteworthy, his assertions that he will not use illegal drugs in the future are not very convincing in view of the absence of any evidence that he has taken steps to address his long history of substance abuse. The fact that he chose to use marijuana after submitting a security clearance application is troublesome and indicative of a lack of good judgment.

In April 2008, Applicant stated that he intended to resolve the delinquent debts that were concerning the Government. Despite having a couple months to do so, he did not take actions to follow through on his assertion, providing another indication of his lack of reliability and good judgment,

Overall, the record evidence leaves me with significant questions as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from financial considerations, drug involvement and criminal conduct.

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 through 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraphs 2.a through 2.b:	Against Applicant
Paragraph 3, Guideline J:	AGAINST APPLICANT
Subparagraphs 3.a through 3.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.

SHARI DAM
Administrative Judge