



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-04940
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Gregg A. Cervi, Esquire, Department Counsel
For Applicant: *Pro se*

November 9, 2010

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

On June 11, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising under Guideline F (Financial Considerations), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the current adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

In a response notarized on July 27, 2010, Applicant admitted the 26 allegations raised under Guideline F, nine of the 10 allegations raised under Guideline E, and failed to respond to the allegation noted under Guideline J.¹ He also requested the matter be

¹ The Guideline J allegation referenced criminal conduct to which Applicant admitted under Guideline E, SOR allegations ¶¶ 2.b, 2.g, and 2.j.

decided on the written record in lieu of a hearing. On August 20, 2010, Department Counsel submitted a File of Relevant Material (FORM), which included 13 attached items. Applicant received the FORM on September 13, 2010, but did not timely respond or object to its contents. The case was assigned to me on November 8, 2010. Based on a review of the case file, submissions, and exhibits, I find Applicant failed to meet his burden regarding the security concerns raised under the three guidelines at issue. Security clearance denied.

Findings of Fact

Applicant is a 42-year-old manufacturer who has worked for the same defense contractor since September 2006. He served in the U.S. military from 1990 until 1993, when he received a general discharge under honorable conditions as a result of misconduct (drug abuse). Applicant has earned 24 college credits. He was divorced in 1996 and remarried in 2006. He has three children. He chose an administrative determination and provided scant information regarding his personal life or financial situation.

Applicant first began drinking alcohol in 1989.² When he joined the service, he drank everyday after work. By at least July 1993, he had begun using marijuana.³ In September 1993, he was given a general discharge from military service for drug abuse. In about March 1994, he was arrested and charged with simple marijuana possession and possession of drug paraphernalia. He was fined for both charges. In March 1997, he was charged with both hit-and-run and driving under the influence of alcohol (DUI). The hit-and-run charge was not prosecuted, but Applicant was fined, placed on probation for two years, and sentenced to three days in jail for the DUI. In about June 2000, he was charged with DUI and ordered to pay a fine. In about October 2003, he was charged with DUI, fined, and placed on probation. In about May 2005, he was charged with DUI, but Applicant pled guilty to driving while ability impaired (DWAI). He was fined, sentenced to 24 hours of community service and 24 days in jail with work release, attended alcohol education, and placed on probation for 15 months. In about July 2005, Applicant was charged with harassment. He received an 18-month deferred sentence and the charge was later dismissed. In about August 2007, he was cited for failure to display proof of insurance and fined \$459. In about January 2009, he was charged with intent to annoy, but no charges were ultimately filed.

Applicant completed a security clearance application on March 27, 2007. In response to Section 28: Your Financial Delinquencies, Applicant denied having been

² FORM, Item 7 (Interrogatories, dated Jan. 6, 2009), at 9.

³ FORM, Item 5 (Security Clearance Application, dated Mar. 7, 2007), at 41 of 46. Applicant wrote that he used marijuana in July 1993.

over 180 days delinquent on any debt or debts in the preceding seven years, and denied being currently delinquent on any debts for over 90 days.⁴

In answering the February 2010 SOR, Applicant admitted to 25 delinquent debts amounting to approximately \$18,262. On their face, approximately \$1,500 are reflected as eight medical accounts. The debts cited in the SOR were noted in credit reports from between April 2007 and February 2010.⁵ Despite his 2010 admissions in his response to the SOR, he previously denied knowledge of some of the accounts in November 2007.⁶ It appears that Applicant's personal information may have been stolen or compromised by his brother. Applicant submitted no evidence showing that he has sought to verify any of the accounts at issue. Only the debt noted at SOR allegation ¶ 1.g for \$748 was disputed.⁷

As of March 2010, Applicant was pursuing Chapter 7 bankruptcy protection. No evidence of bankruptcy filing was submitted. There is no evidence his debts are related to his 1996 divorce. Applicant's SCA shows that he was continuously employed from May 1996 through the time he assumed his current position. Although there is evidence he was away from work for about four weeks following a November 2008 hernia surgery, no evidence was offered showing that the medical debts at issue are related to the hernia procedure or that he was on unpaid leave during his recovery.⁸

Applicant pursued credit counseling in September 2008 and devised an action plan, but there is no evidence it helped him address his debts or led to a viable repayment plan.⁹ A 2009 budget shows monthly gross income of \$2,500 and deductions of \$2,500, suggesting he has no net monthly income.¹⁰ Total monthly expenses reflect a sum amounting to about \$4,400.¹¹ No assets or outstanding financial obligations are noted in the budget.¹²

⁴ *Id.*, at 43-44 of 46. At the time, the debts noted at SOR allegations ¶¶ 1.k, 1.o, 1.q, and 1.y were delinquent. See FORM, Items 10-13 (Credit Reports).

⁵ See FORM, Items 10-13 (Credit Reports).

⁶ See FORM, Item 7 (Interrogatories, dated Jan. 6, 2009), at 105 (Interview, dated Nov. 16, 2007).

⁷ See FORM, Item 10 (Credit Report, dated Feb. 25, 2010).

⁸ FORM, Item 7, *supra*, note 5, at 96 (Surgical Documentation).

⁹ FORM, Item 8 (Interrogatories, dated Sep. 15, 2008), at 143-144 (Counseling)

¹⁰ FORM, Item 7, *supra*, note 5, at 89 (Budget). The space for net income is blank. It is possible the \$2,500 noted as total deductions was meant to be on the line for net salary. Regardless, his expenses are greater than his income.

¹¹ *Id.* There is no indication of Applicant's wife's income.

¹² *Id.*

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's over-arching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The United States Government (government) must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." ¹³ The burden of proof is something less than a preponderance of evidence. The burden of persuasion is on the applicant. ¹⁴

A person seeking access to classified information enters into a fiduciary relationship with the government based on 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 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." The "clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." ¹⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be

¹³ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

¹⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

¹⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

resolved in favor of protecting such information.¹⁶ A security clearance denial does not necessarily reflect badly on an applicant's character. It is merely an indication that the applicant has not met the strict guidelines established for issuing a security clearance.

Analysis

Guideline F - Financial Considerations

Under Guideline F, "failure or an 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."¹⁷ It also states that "an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds."¹⁸ Here, Applicant admitted to about \$18,262 in delinquent debt. Therefore, Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts) and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

Applicant previously stated that he did not recognize or know about some of the debts at issue, but later admitted all 25 debt-related allegations listed in the SOR. The evidence shows that only one account was disputed. There is no evidence that any efforts have been exerted to address these debts, except information that he was pursuing bankruptcy protection as of March 2010. Applicant failed to provide any evidence regarding a bankruptcy filing in response to the June 2010 SOR or the August 2010 FORM. Financial Considerations Mitigating Condition (FC MC) 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) does not apply.

Applicant has not been unemployed for over a decade. There is no evidence any of the debts at issue are related to his 1996 divorce, 2008 hernia surgery, or possible identity theft. There is no evidence he has disputed more than one delinquent debt. Insufficient evidence was offered to raise Financial Considerations Mitigating Condition AG ¶ 20(b) (the conditions that resulted in the behavior 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 received credit counseling, but there is no evidence it resulted in a regular and successful repayment plan or otherwise helped him address the debts at

¹⁶ *Id.*

¹⁷ AG ¶ 18.

¹⁸ *Id.*

issue. He admitted all 25 debts at issue, no evidence of a successful Chapter 7 bankruptcy filing was offered, and no evidence was presented showing any recent efforts to address his debts. Therefore, neither FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control) nor FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. Financial considerations security concerns remain unmitigated.

Guideline E - Personal Conduct

Under Guideline E, security concerns arise because “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.”¹⁹ In addition, “any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process” is of special interest.²⁰ Here, personal conduct concerns were raised when Applicant received a general discharge from the service for drug abuse; was charged and fined for marijuana possession and possession of drug paraphernalia in 1994; sentenced, fined, and placed on probation for DUI in 1997; fined for DUI in 2000; fined and placed on probation for DUI in 2003; pled guilty to DWAI in 2005; charged with harassment in 2005; denied having any delinquent accounts on his 2007 SCA; fined for failure to display proof of insurance in 2007; and arrested for intent to annoy in 2009.

Applicant admitted all related allegations, except for the allegation that he falsified material facts on his SCA for not noting four specified delinquent debts. He failed, however, to identify a reason for his failure to note those debts on his SOR. Such facts are sufficient to raise Personal Conduct Disqualifying Conditions AG ¶ 16(a) (deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities) and AG ¶ 16(c) (credible adverse information in several adjudicative areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, 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). Consequently, the burden shifts to Applicant to mitigate the resultant security concerns raised by the allegations.

Applicant offered no evidence in mitigation of the allegations cited under Guideline E, although it can be surmised from the record he either did not recognize or

¹⁹ AG ¶ 15.

²⁰ *Id.*

had no knowledge of the four debts he failed to note on his SCA. While such a position may rebut the allegation of intentional falsification or omission with regard to SOR allegation ¶ 2.h, it provides no mitigation for the remaining nine allegations under the guideline. Personal conduct security concerns remain unmitigated.

Guideline J – Criminal Conduct

The concern under this guideline 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.”²¹ In raising this guideline, the SOR references seven allegations previously addressed under Guideline E (Applicant was charged and fined for marijuana possession and possession of drug paraphernalia in 1994; sentenced, fined, and placed on probation for DUI in 1997; fined for DUI in 2000; fined and placed on probation for DUI in 2003; pled guilty to DWAI in 2005; charged with harassment in 2005; and arrested for intent to annoy in 2009). Applicant admitted those allegations under Guideline E, but failed to admit or deny them under Guideline F. His admission of the underlying facts under Guideline E, however, is sufficient to raise Criminal Conduct Disqualifying Conditions 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). Consequently, Applicant must offer evidence mitigating related security concerns.

Insufficient record evidence was introduced for the application of Criminal Conduct 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), AG ¶ 32(b) (the person was pressured or coerced into committing the act and those pressures are no longer present in the person’s life), or 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). None of the other mitigating conditions apply. Therefore, criminal conduct security concerns remain unmitigated.

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 an applicant’s conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). Under 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 AG and the whole-

²¹ AG ¶ 30.

person concept. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the “whole-person” factors. Applicant is a 42-year-old husband and father of three children. He served in the U.S. military and finished 24 college credits. He has worked for the same employer since 2006.

Applicant provided nominal information regarding his personal life and his finances. Since 1994, he has had numerous brushes with the law, many of them related to alcohol. He was last arrested in 2009. Meanwhile, between the mid-2000s and 2009, he acquired over \$18,000 in delinquent debt. While he has received credit counseling, there is scant evidence he has tried to address his debts. He pursued filing for Chapter 7 protection to address his financial situation, but there is no evidence a bankruptcy filing was made. Moreover, his written budget reflects expenses that far exceed his income. There is enough evidence to suggest he was unaware of his complete financial situation and the contents of his credit report in 2007 to rebut the allegation that he intentionally falsified his SCA regarding his delinquent debts. Insufficient evidence, however, was submitted to rebut, extenuate, or mitigate any of the other allegations raised under the three guidelines at issue. Therefore, financial considerations, personal conduct, and criminal conduct security concerns remain unmitigated. 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.z:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a - 2.g:	Against Applicant
Subparagraph 2.h:	For Applicant
Subparagraphs 2.i - 2.j:	Against Applicant
Paragraph 3, Guideline J:	AGAINST APPLICANT
Subparagraph 3.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 access to classified information. Clearance denied.

ARTHUR E. MARSHALL, JR.
Administrative Judge