



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



In the matter of:

ISCR Case No. 08-05458

Applicant for Security Clearance

Appearances

For Government: Eric H. Borgstrom, Esquire, Department Counsel

For Applicant: *Pro se*

April 8, 2010

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the case file, pleadings, and exhibits, I conclude that Applicant failed to rebut or mitigate the Government's security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct. His eligibility for a security clearance is denied.

On May 14, 1997, Applicant completed and certified a security clearance application (SF-86). On May 30, 2006, he completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP). On April 9, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline E, Personal Conduct, and 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) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant provided two answers to the SOR, dated April 24, 2009, and July 20, 2009. In his answer to the SOR, Applicant requested that his case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on December 11, 2009. The FORM contained documents identified as Items 1 through 14. By letter dated December 30, 2009, DOHA forwarded a copy of the FORM to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the file on January 8, 2010. His response was due on February 7, 2010. Applicant did not file any additional information within the required time period. On March 19, 2010, the case was assigned to me for a decision.

Findings of Fact

The SOR contains five allegations of disqualifying conduct under AG E, Personal Conduct (SOR ¶¶ 1.a. through 1.e) and five allegations of financial delinquency under AG F, Financial Considerations (SOR ¶¶ 2.a. through 2.e.). (Item 1.) In his Answers to the SOR, Applicant admitted all allegations under AG E and AG F. (Item 2; Item 3.) Applicant's admissions are admitted herein as findings of fact.

The following facts are established by the record provided by the government in this case. The items include Applicant's 1997 SF-86 and his 2006 e-QIP; official court and investigation records; Applicant's signed, sworn statement of August 21, 1997; Applicant's responses to DOHA interrogatories;¹ and Applicant's 2006 and 2008 credit reports. (See Items 4 through 14.)

Applicant is 40 years old and employed as a senior engineer by a federal contractor. He has a high school diploma and some additional vocational school training. He has been gainfully employed in computer technology since 1995. From May 1997 until about March 1998, he was employed as a federal contractor. In 1998 or 1999, he was awarded a security clearance in order to work at a certain location. From March 1998 through September 2004, he held a series of computer technology jobs with private businesses. He was fired by an employer in September 2004, after being told he was not dependable. Since October 2004, he has been employed as a federal contractor. (Item 4; Item 5; Item 6.)

Applicant married in 1997. He and his wife are the parents of four children, ages 15, 13, 11, and 8. (Item 4.)

Applicant graduated from high school in 1987. He began to smoke marijuana two times a week when he was a teen-ager. He purchased marijuana from unknown drug dealers in his community. He enjoyed using marijuana, but he concluded he would not be able to get a better job if he continued to smoke marijuana. When he completed his

¹ Applicant was interviewed by an authorized investigator from the U.S. Office of Personnel Management on April 1, 2008, and September 29, 2008. On December 30, 2008, in response to DOHA interrogatories, Applicant signed a notarized statement affirming that he had read the summaries of the interviews and found them to be true and correct. He made no changes, corrections, or revisions to the investigator's summaries. (Item 6.)

SF-86 in May 1997, Applicant admitted using marijuana twice between December 1995 and January 1996. In his Answer to the SOR, Applicant admitted marijuana use, with varying frequency, from at least 1990 to at least January 1996 and from at least 1999 to 2001.² In about 2001, he stopped smoking marijuana. Since that time, he asserts, he has not used marijuana or any other illegal drug. When he completed his e-QIP in May 2006, he denied any illegal drug use in the previous seven years. (Item 2; Item 3; Item 4 at 34; Item 5; Item 6 at 8.)

Between 1995 and 1999, Applicant and his girlfriend, who later became his wife, were involved in a number of arguments that resulted in physical altercations and arrests. In 1995, Applicant was arrested and charged with (1) Simple Assault and (2) Domestic Violence. In February 1996, he was arrested and charged with simple assault. In October 1996, he was arrested and charged with Simple Assault-Domestic Violence. In November 1997, Applicant was arrested and charged with second degree assault and possession of marijuana. Applicant pled guilty to the second degree assault charge, paid a fine, and received probation before judgment. The marijuana possession charge was *nolle prossed*. In July 1999, Applicant was arrested and charged with simple assault. He was ordered to take an anger management course and the charge was *nolle prossed*. (Item 6; Item 7; Item 8.)

Section 23d on the e-QIP that Applicant completed and certified on May 30, 2006, asks: "Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?" Applicant answered "No" to the question at Section 23(d), thereby failing to list his arrest and charge of possession of marijuana in November 1997. (Item 4.)

Section 23f on Applicant's 2006 e-QIP asks: "In the last 7 years, have you been arrested for, charged with, or convicted of any offense(s) not listed in response to a, b, c, d, or e above? (Leave out traffic fines of less than \$150 unless the violation was alcohol or drug related.)" Applicant responded "Yes" to the question at Section 23f and listed a 2005 charge of driving on an expired license. He failed to list that he was charged in 1999 with Simple Assault, ordered to attend anger management training, and the charge was *nolle prossed*. (Item 4.)

Section 24a on Applicant's 2006 e-QIP asks: "Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.) amphetamines, depressants, (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.), or prescription drugs?" Applicant answered "No" and failed to list that he had used marijuana from at least 1999 to about 2001. (Item 4.)

² The record does not specify when Applicant was awarded a security clearance, nor does it specify who his employer was at the time the clearance was granted. I conclude that there is insufficient record evidence to find that Applicant used marijuana while holding a security clearance.

Question 26 on the SF-86 that Applicant completed and certified on May 14, 1997 asks: "In the last 7 years, have you been arrested for, charged with, or convicted of any offense(s) not listed in modules 21, 22, 23, 24, or 25? (Leave out traffic fines of less than \$150 unless the violation was alcohol or drug related.)" Applicant answered "No." He failed to list his November 1995 arrest and charge of Simple Assault and Domestic Violence; his February 1996 arrest and charge of Simple Assault; and his October 1996 arrest and charge of Simple Assault-Domestic Violence. (Item 5.)

In a signed, sworn statement to an authorized investigator on August 21, 1997, Applicant stated that he misread Question 26 and answered "No" because he thought the question referred only to felony crimes. He denied deliberate falsification of the answer. (Item 7 at 2.)

Question 27 on Applicant's May 14, 1997 SF-86 asks if an Applicant has used illegal drugs, to include illegal marijuana, "[s]ince the age of 16 or in the last 7 years. Applicant answered "Yes" and listed marijuana use twice between December 31, 1995 and January 1, 1996. He failed to list that he had used marijuana, with varying frequency, from at least 1990 to at least January 1996. (Item 5.)

In October 2002, Applicant filed for chapter 7 bankruptcy. The bankruptcy court discharged his delinquent debts in October 2002. (Item 10; Item 14.)

The SOR also alleges that Applicant failed to meet his financial obligations. The SOR alleged at ¶ 2.b. that Applicant owed a creditor a debt of approximately \$433, which was in collection status and unsatisfied as of January 12, 2009. The SOR alleged at ¶ 2.c. that Applicant owed a municipality a delinquent debt of \$205 for unpaid parking tickets, and, as of July 18, 2006, the debt had not been satisfied. The SOR alleged at ¶ 2.d. that Applicant owed a creditor \$65 on a debt that had not been satisfied as of January 12, 2009. Finally, the SOR alleged at ¶ 2.e. that Applicant owed a creditor approximately \$9,432 on an account that had not been satisfied as of April 1, 2008. Applicant admitted the four debts and provided no information to establish that the debts had been paid or otherwise satisfied. The four debts appear on Applicant's credit bureau reports. (Item 2; Item 3; Item 9; Item 10.)

About nine years ago, Applicant paid \$200 for a series of credit counseling classes that his wife attended. He said the classes did not help him and his wife with their financial situation. (Item 6 at 5.)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.*

at 527. The President has authorized the Secretary of Defense or his designee to grant Applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

When evaluating an Applicant's suitability for a security clearance, an 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 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, the administrative judge applies these guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense 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 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 E, Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern:

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 provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

When Applicant completed and signed his SF-86 in May 1997 and his e-QIP in May 2006, he failed to provide truthful answers to questions about his drug or alcohol charges or convictions, his arrests for assault and domestic violence, and his marijuana use.

The SOR alleged that Appellant’s responses to these questions on his 1997 SF-86 and his 2006 e-QIP showed he had deliberately falsified material facts by failing to admit and disclose his drug arrest, his arrests for assault and domestic violence, and his marijuana use.

This information raises a security concern under AG ¶ 16(a), which reads as follows: “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.”

Appellant’s disqualifying personal conduct might be mitigated if “the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts.” AG ¶17(a).

Applicant did not make good-faith efforts to correct the omissions before being confronted with the facts. In his April 2009 and July 2009 answers to the SOR, he admitted deliberately falsifying his responses to Questions 26 and 27 on his May 1997 SF-86. Moreover, in his answers to the SOR, he also admitted deliberately falsifying his responses to Sections 23d, 23f, and 24 on the e-QIP he signed and certified as true on May 30, 2006.

Applicant’s deliberate falsifications are a matter of security concern. I conclude that none of the Guideline E mitigating factors apply to the facts of his case.

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" is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. In 2002, Applicant's delinquent debts were discharged in a chapter 7 bankruptcy, and he was able to resume his financial life with clean slate. However, he fell behind again by failing to satisfy several smaller debts and one substantial delinquency. He was unwilling or unable to pay his creditors. This 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. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant's financial delinquencies. Unresolved financial delinquency might be mitigated if it "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(a)). Additionally, unresolved financial delinquency might be mitigated if "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(b)). Still other mitigating circumstances that might be applicable include 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" (AG ¶ 20(c)) or "the individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts" (AG ¶ 20 (d)). Finally, security concerns related to financial delinquencies might be mitigated if "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." (AG ¶ 20 (e)).

Applicant has a history of financial delinquencies that dates to at least 2002. His delinquencies are recent and on-going. They have occurred under circumstances that are likely to recur.

Applicant has been steadily employed since 1995. The record does not support a conclusion that his failure to satisfy his creditors is the result of circumstances beyond his control. While Applicant provided financial counseling for his wife several years ago, he does not appear to have sought similar counseling for himself, and he failed to provide documentation that he had made good-faith efforts to satisfy his creditors. His debts remain unresolved. In determining an individual's security worthiness, the Government cannot rely on the possibility that an applicant might resolve his or her outstanding debts at some future date. ISCR Case No. 98-0614 at 5 (App. Bd. Jul. 12, 1999). I conclude that none of the financial considerations mitigating conditions apply to the facts of Applicant's case.

Whole Person Concept

Under the whole person concept, an 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):

(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.

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 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 deliberately falsified his answers to two security clearance applications that he completed and certified in 1997 and 2006. He has failed to satisfy his financial delinquencies, and he provided no documentation to establish that he has established a plan to do so. He did not approach his creditors, alert them to his financial problems, and attempt to find a responsible resolution for paying or settling his debts.

Overall, the record evidence leaves me with serious doubts about Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising from his personal conduct and financial delinquencies.

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 E: AGAINST APPLICANT

Subparagraphs 1.a.-1.e.: Against Applicant

Paragraph 2, Guideline F: AGAINST APPLICANT

Subparagraphs 2.a. - 2.e.: 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Joan Caton Anthony
Administrative Judge