



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-08466
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel

For Applicant: *Pro se*

September 15, 2009

Decision

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on February 8, 2008 (Government Exhibit 1). On November 25, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F, G, and J, concerning the Applicant. 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 filed an Answer to the SOR on January 2, 2009, and requested a decision without a hearing. Pursuant to Paragraph E3.1.7 of the Additional Procedural Guidance at Enclosure 3 of the Directive, Department Counsel requested that a hearing be held in this case. (Transcript at 9.) Department Counsel was prepared to proceed on

January 30, 2009. I received the case assignment on April 6, 2009. DOHA issued a notice of hearing on April 8, 2009. The hearing was convened on May 22, 2009.

The Government offered Government Exhibits 1 through 6, which were received without objection. Applicant testified on his own behalf, and submitted Applicant's Exhibits A through D, which were received without objection. The Applicant requested that the record remain open until June 5, 2009, for the submission of additional documents. The Applicant submitted Applicant's Exhibits E and F in a timely fashion, and they were received without objection. DOHA received the transcript of the hearing on May 29, 2009. The record closed on June 5, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

The Applicant is 36 and divorced. He is employed by a defense contractor and seeks to retain a security clearance previously granted in connection with his employment.

Guideline F, Financial Considerations

The Government alleges in the first paragraph of the SOR that the Applicant is financially overextended and therefore at risk of engaging in illegal acts to generate funds. The Applicant admitted all of the allegations under this guideline. Those admissions are hereby deemed findings of fact.

The Applicant met his ex-wife while they were both in the Air Force. They were married for three and a half years and the majority of debts in the SOR were incurred during the marriage. The Applicant's divorce from his wife in 2006 was very difficult for him emotionally. He suffered from personal problems, as further discussed below. One of these problems was that he stopped paying a lot of his bills until early in 2009. The Applicant took full responsibility for the debts, even those of his now ex-wife, and Department Counsel conceded that all debts save one have been paid. (Transcript at 17, 29.) The Applicant testified, "All of the court proceedings was a really big wake-up call that I need to start paying off the debts now." (Transcript at 48.)

Subparagraph 1.a. The Applicant admits that he owed \$78 on a past due account. This debt has been paid in full. (Government Exhibit 6 at 1; Applicant's Exhibit B at 25.)

Subparagraph 1.b. The Applicant admits that he owed \$56 for a past due medical bill. This debt has been paid in full. (Applicant's Exhibit A; Transcript at 46-47.)

Subparagraph 1.c. The Applicant admits that he owes \$14,000 on a credit card debt. The records show that the amount actually past due on this account is \$6,000. (Government Exhibit 3 at 11, Exhibit 6 at 1; Applicant's Exhibit B at 15-16.) The

Applicant has made arrangements to pay his arrearage to this creditor starting May 31, 2009, and ending October 31, 2009. The Applicant submitted documentary evidence that this arrangement is acceptable to the creditor, and that he made his first payment of \$500 on May 31, 2009. (Applicant's Exhibit E at 2-3.)

Subparagraph 1.d. The Applicant admits that he owed \$399 for a past due credit card account. This debt has been paid. (Government Exhibit 6 at 2; Applicant's Exhibit B at 13, 17, 25.)

Subparagraph 1.e. The Applicant admits that he owed \$3,856 for a past due credit card account. This debt has been paid. (Government Exhibit 6 at 1; Applicant's Exhibit B at 11.)

Subparagraph 1.f. The Applicant admits that he owed \$696 for a past due credit card account. This debt has been paid. (Government Exhibit 6 at 2; Applicant's Exhibit B at 14, 24.)

Subparagraph 1.g. The serial number for the debt in this subparagraph is 1001319882 as shown in the credit report. (Government Exhibit 3 at 4.) The serial number for the debt set forth in subparagraph 1.b., above, is 1001319882 in a second credit report. (Government Exhibit 6 at 1.) I find that this is the same debt as that set forth in subparagraph 1.b., above.

Subparagraph 1.h. A review of the entry for this debt of \$78 in the applicable credit report (Government Exhibit 3 at 6) states that it was collecting the debt for the creditor reported as being paid this amount in the most recent credit report (Government Exhibit 6 at 1.) I find that this is the same debt as that set forth in subparagraph 1.a., above.

Subparagraph 1.i. The Applicant admits that he owed \$1,164 for a past due account. This debt has been paid. (Applicant's Exhibit B at 15.)

As of the date the record closed, the Applicant had paid approximately \$6,749 towards the debts in the SOR. The Applicant currently lives with his parents, and is able to pay all of his obligations in a timely manner in the future. (Transcript at 32, 55-56.)

Guideline G - Alcohol Consumption

Guideline J – Criminal Conduct

The Government alleges under Guideline G that the Applicant is ineligible for clearance because he uses intoxicants to excess. The Government further alleges under Guideline J that the Applicant is ineligible for clearance because he has engaged in criminal acts. The Applicant admitted the factual allegations under both guidelines. Those admissions are hereby deemed findings of fact.¹

¹Subparagraph 3.a. of the SOR was amended on motion of the Department Counsel to read, "a. That information set forth in subparagraph 2.a. above." (Transcript at 9-11.)

The Applicant has had one alcohol-related arrest, which occurred on January 19, 2007. He was on business travel shortly after his separation from his wife. The Applicant got very intoxicated and crashed his car into a tree, afterwards waking up in the hospital. (Transcript at 33-37.)

He plead guilty to Driving Under the Influence of Alcohol (DUI) and was sentenced to three years unsupervised probation, fines/fees/restitution of \$1,843, community service, one year of Alcoholics Anonymous meetings, and a nine-months-duration DUI course. The Applicant has completed all of the sentence requirements except the community service. (Applicant's Exhibit F, Transcript at 37-40.)

The Applicant testified that he has not had anything to drink since October 2007. In that month, he was placed on probation by his employer due to missing work because of drinking. He is no longer on probation at his job, and testified that he has no interest in drinking in the future because "work is my life and if I lost that, then I need to change my life." (Applicant's Exhibit C and Exhibit D; Transcript at 42-43.)

As stated above, one way the Applicant has changed his life is by moving back in with his parents. Regarding this move, he testified, "I thought it was the best thing to do at the time. They're very supportive. So I felt it was a good change of environment." (Transcript at 49.)

Mitigation

The Applicant submitted a letter dated December 31, 2008, from his direct manager. This person states:

While [the Applicant] has had some trials and challenges a year ago, he has made significant efforts to learn from the decisions he made, change his behavior and work on correcting the results of his past events. Due to this significant improvement, I have increased [the Applicant's] tasking and level responsibility. While we would in no way jeopardize the firms reputation or put ourselves in a position of increased liability, we do trust [the Applicant] and view him as a reliable and valuable member of our team. (Applicant's Exhibit D.)

The Applicant also submitted his most recent evaluation from his job. The document shows that he is a highly respected and successful employee. (Applicant's Exhibit E at 5-9.)

Policies

Security clearance decisions are not made in a vacuum. 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(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. In addition, the administrative judge may also rely on his own common sense, as well as his knowledge of the law, human nature, and the ways of the world, in making a reasoned 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized by President Eisenhower in Section 7 of Executive Order 10865, "Any determination under this order . . . shall be a determination 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(c), "a history of not meeting financial obligations" may raise security concerns. The Applicant admits that he owed the debts set forth under paragraph 1 of the SOR. The evidence is sufficient to raise this potentially disqualifying condition, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where "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(c) applies if "there are clear indications that the problem is being resolved or is under control." Evidence that "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts" is also mitigating under AG ¶ 20(d).

By his own admission, the Applicant made some poor personal choices after his wife left him. Among them was failing to pay his bills for a substantial amount of time. The Applicant has made great strides in paying his overdue bills, and has paid a substantial amount of money towards the arrearage. Only one of the debts stated in the SOR has not been paid, and he has made arrangements to pay that debt. He showed that this failure was an aberrant situation and it will not be repeated. I conclude these potentially mitigating conditions apply.

Guideline G - Alcohol Consumption

Guideline J – Criminal Conduct

The security concern relating to the guideline for Alcohol Consumption is set out in AG ¶ 21:

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.

The security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 30:

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.

The Applicant was involved in a single alcohol-related arrest in January 2007. The Applicant has not used alcohol since October 2007, after a work-related incident, which the Applicant first discussed in his Answer to the SOR. Even though not alleged in the SOR, I am considering this incident under this Guideline.

There is one Disqualifying Condition concerning Alcohol Consumption that arguably applies to this case. 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."

I have also considered AG ¶ 22(b). "alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent."

Under the particular facts of this case, the following mitigating conditions clearly apply to the Applicant's situation. AG ¶ 23(a) states that it can be a mitigating condition when, "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." In addition, AG ¶ 23(b) applies where, "the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser)."

Under the Criminal Conduct guideline, the following Disqualifying Conditions are applicable. AG ¶ 31(a) "a single serious crime or multiple lesser offenses," and AG ¶ 31(d) "individual is currently on parole or probation."

After considering the evidence in the record, I find that the following mitigating conditions also apply to this case. Under 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." In addition, AG ¶ 32(d) states, "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."

When viewed in the light least favorable to the Applicant, he has had two alcohol-related incidents in the past three years. Only one of those incidents involved drinking and driving, which resulted in an automobile accident where he was hospitalized. While this is certainly nothing to be taken lightly, there is no evidence of a pattern of abuse here. His last incident occurred over a year and a half before the record closed. I have considered the fact that he is still on probation, as well as his attendance at a nine-month DUI program and his decision to stop drinking in 2007. The evidence is clear that the drinking and driving offense was an aberration, out of character, and will not be repeated. The Applicant has mitigated the security significance of these incidents.

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. 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. 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The Applicant got into financial difficulty because of a poor personal decision that he regrets and persuasively showed will not be repeated. He has paid off all of his past due debts but one. With regards to that creditor, he has an approved plan and is fulfilling it. The Applicant is a hard-working, respected, professional person who has had two alcohol-related incidents in the last three years. There is little to no evidence that these incidents show a pattern, or that he is alcohol-dependent or an alcohol abuser. In viewing all the facts of this case, I find that the Applicant has mitigated the security significance of his prior conduct. As set forth at length above, I find that there have been permanent behavioral changes under AG ¶ 2(a)(6). He has behaved reasonably, maturely and appropriately in trying to resolve the Government's concerns. Under the particular circumstances of this case, I find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)), and that there is also little to no likelihood of recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his financial

considerations, alcohol consumption and criminal conduct. Paragraphs 1, 2, and 3 are found for the Applicant. He is currently eligible for 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:	FOR THE APPLICANT
Subparagraph 1.a:	For the Applicant
Subparagraph 1.b:	For the Applicant
Subparagraph 1.c:	For the Applicant
Subparagraph 1.d:	For the Applicant
Subparagraph 1.e:	For the Applicant
Subparagraph 1.f:	For the Applicant
Subparagraph 1.g:	For the Applicant
Subparagraph 1.h:	For the Applicant
Subparagraph 1.i:	For the Applicant
Paragraph 2, Guideline G:	FOR THE APPLICANT
Subparagraph 2.a:	For the Applicant
Subparagraph 2.b:	For the Applicant
Subparagraph 2.c:	For the Applicant
Paragraph 3, Guideline J:	FOR THE APPLICANT
Subparagraph 3.a:	For the Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS
Administrative Judge