



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



In the matter of:)
)
-----) ISCR Case No. 08-10157
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Robert E. Coacher, Esquire, Department Counsel
For Applicant: *Pro se*

December 31, 2009

Decision

CURRY, Marc E., Administrative Judge:

Applicant failed to mitigate the government's security concerns arising from his delinquent finances and falsification of two security clearance applications. Clearance is denied.

On May 12, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E, Personal Conduct, H, Drug Involvement, and 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 on June 1, 2009, admitting all of the allegations except those set forth in SOR subparagraph 1.c and 1.e. He requested a hearing, and

the case was assigned to me on September 10, 2009. On September 22, 2009 a Notice of Hearing was issued scheduling the case for October 14, 2009. The hearing was conducted as scheduled. I received six government exhibits and Applicant's testimony. The transcript was received on October 19, 2009.

Findings of Fact

Applicant is a 31-year-old single man with two children, ages 11 years and eight weeks. He was married from 2006 to 2009 (Exhibit 1 at 22). The marriage ended in divorce in March 2009. Applicant's oldest child is a product of his marriage, and the infant is the child of his fiancée with whom Applicant currently lives. Applicant has physical custody of the 11-year-old child.

Applicant attended junior college in 1996. He withdrew before earning a degree, then re-enrolled in four-year college in 2000 (Exhibit 4 at 3). He attended college for four years, but did not earn a degree (Tr. 19). Since leaving college, Applicant has worked as a security guard for two successive contractors at the same facility (Tr. 19).

Applicant used marijuana from 1995 to 2004 (Tr. 20). He smoked once in high school in 1995 and used it at parties while in college (Tr. 20). Applicant's marijuana use "kind of carried over" into his career (Tr. 20). In 2004, Applicant's employer administered a random drug test (Exhibit 4 at 12). Applicant failed it, testing positive for marijuana (*Id.*). His employer then placed him on probation for 90 days (*Id.*). Applicant's employer administered two more random drug tests, and Applicant passed both (*Id.*).

Applicant attributes his 2004 marijuana use to depression that stemmed from problems he was having with his then girlfriend (Tr. 21). He has not used marijuana since 2004.

In September 2004, Applicant completed a security clearance application (Answer). He answered "no" to Questions 27 (***Your Use of Illegal Drugs and Drug Activity - Illegal Use of Drugs*** *Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance . . . ?*), and 28 (***Your Use of Illegal Drugs and Drug Activity - Use in Sensitive Positions*** *Have you EVER illegally used a controlled substance while employed as a law enforcement officer, prosecutor, or courtroom official; while possessing a security clearance; or while in a position directly and immediately affecting the public safety?*).

In May 2008, Applicant completed another security clearance application, and again, failed to disclose his past marijuana use either in response to Questions 27 or 28 (Answer). He also did not disclose this information when he met with a security clearance investigative agent the following month (Answer).

Applicant testified that he did not disclose his marijuana use on his 2004 security clearance because his supervisor told him that "it was between me and him, and that it wouldn't show up on my record, and he would keep it off my record" (Tr. 23). He did not

disclose the marijuana use on the 2008 application or to the investigator because he “did not want to lose [his] career as a security officer” (Answer at 2).

Applicant owes eight creditors approximately \$14,000 of delinquent debt (see *generally*, Exhibits 5-6). Approximately \$13,200 constitute student loans (SOR subparagraphs 3.b - 3.e). Applicant owes the remainder to utility companies, (SOR subparagraphs (SOR subparagraphs 3.a, 3.f, and 3.i), and a credit card company (SOR subparagraph 3.g).

SOR subparagraph 3.a is a cable television bill for \$452 stemming from Applicant’s marriage (Tr. 26). In response to government interrogatories propounded in February 2009, Applicant indicated that he planned to begin paying this bill through a payment plan beginning March 2009 (Exhibit 3 at 8). He provided no evidence that he has been making any payments.

Applicant contends that he had arranged payment plans to satisfy the debts listed in SOR subparagraphs 3.b, 3.f, and 3.g, but was unable to adhere to them because he “had to pay mortgage, gas, [and] other bills,” and his funds “haven’t been that great” (Tr. 26, 27).

Applicant denied the debts listed in SOR subparagraphs 3.c, 3.d, and 3.e. He contends that he paid them through wage garnishments. He provided no supporting evidence (Tr. 24). Applicant has not yet begun making payments to satisfy the \$140 phone bill listed in SOR subparagraph 3.h (Tr. 27).

Applicant attempted to consolidate his debts through a debt management company (Tr. 35). He did not specify when he considered this option. He chose not to pursue the debt consolidation option because the debt management company would not include all of his debts in the proposed plan (Tr. 35). For the past month, a family friend has been helping Applicant manage his finances (Tr. 35-36).

Applicant maintains a budget (Tr. 28). He has approximately \$500 remaining after expenses. His budget does not account for any of the SOR debts (Tr. 38).

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 overarching 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.”

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.

Analysis

Guideline E, Personal Conduct

The security concern under this guideline is as follows:

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 (AG ¶ 15).

Applicant intentionally omitted information about his drug involvement history from his 2004 and 2008 security clearance applications, and during a 2008 interview with an investigative agent. The following disqualifying conditions apply:

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.

AG ¶ 16(b): deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

Applicant’s contention that his supervisor advised him not to list his failed drug test on his 2004 security clearance application conceivably triggers AG ¶ 17(b):

the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully.

Applicant's explanation for omitting his failed drug test or drug involvement history from his 2004 application contradicts his explanation for omitting his drug involvement history from the 2008 investigative process. Consequently, I conclude his contention that he relied on his supervisor's advice when completing the 2004 security clearance application is not credible. Moreover, Applicant presented no evidence establishing that his supervisor was authorized to advise him on the completion of his security clearance application. AG ¶ 17(b) is not applicable.

Although Applicant's contention that he omitted his drug involvement history from the 2008 security clearance application is more credible than his explanation for omitting the information from the 2004 application, it does not mitigate the security concern. Fear of losing one's job does not justify falsification (DISCR OSD No. 89-1586 (October 26, 1990) at 4).

Guideline H, Drug Involvement

Under this guideline, "use of an illegal 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" (AG ¶ 24).

Applicant's history of marijuana use and his failed drug test trigger the application of AG ¶¶ 25(a), "any drug abuse," and 25(b), "testing positive for illegal drug use." After failing the drug test in 2004, his employer administered two more random drug tests. He passed both, and has not used marijuana since the episode that triggered the failure of the drug test. AG ¶ 26(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 AG ¶ 26(b)(3), "an appropriate period of abstinence," apply.

Guideline F, Financial Considerations

Under this guideline, "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" (AG ¶ 18). Here, Applicant's history of financial problems triggers the application of AG ¶¶ 19(a), "inability or unwillingness to satisfy debts," and 19(c), "a history of not meeting financial obligations."

Only two of Applicant's delinquent bills, collectively less than \$1,000, relate to his separation and subsequent divorce. Applicant accrued the student loan debts before he was married, and did not testify to any relationship between these debts and his divorce. AG ¶¶ 20(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," does not apply.

Applicant has made minimal progress toward satisfying his delinquencies, and acknowledges that financial hardship has derailed previous efforts to satisfy his delinquencies. AG ¶ 20(c), ". . . there are clear indications that the problem is being resolved, or is under control," does not apply.

Applicant contends that he satisfied several of the SOR delinquencies through wage garnishments, but provided no supporting documentation. Assuming that Applicant's contention is true, such payments do not constitute "good-faith effort[s] to repay overdue creditors or otherwise resolve debts" sufficient for AG ¶ 20(d) to apply.

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 for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Applicant's marijuana use was infrequent. Moreover, nearly five years have elapsed since he last used it. His marijuana use no longer poses a security concern.

Conversely, Applicant repeatedly omitted information about his marijuana use during the course of two security clearance investigations over a four-year span of time. This conduct undermines his credibility, thus minimizing the probative value of his promises to get his financial situation under control. Upon evaluating this case in the context of the whole person concept, I conclude Applicant has mitigated the drug involvement security concern, but failed to mitigate the personal conduct and financial considerations security concerns. 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:

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|---------------------------|-------------------|
| Paragraph 1, Guideline E: | AGAINST APPLICANT |
| Subparagraphs 1.a - 1.f: | Against Applicant |
| Paragraph 2, Guideline H: | FOR APPLICANT |
| Subparagraphs 2.a - 2.c: | FOR APPLICANT |
| Paragraph 3, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 3.a - 3.h: | 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.

MARC E. CURRY
Administrative Judge