



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



In the matter of:)
)
) ISCR Case No. 08-11427
)
)
Applicant for Security Clearance)

Appearances

For Government: Caroline H. Jeffreys, Esquire, Department Counsel
For Applicant: *Pro se*

September 6, 2011

Decision

WHITE, David M., Administrative Judge:

Applicant incurred some delinquent debts after a change-of-station move, and due to personnel office errors when he was discharged from the Navy. He worked aggressively to resolve them all. He used marijuana a few times in high school, and once while camping in 2008. Applicant fully mitigated resulting security concerns. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Applicant submitted a security clearance application (SF 86) on September 17, 2008. On December 6, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations) and Guideline H (Drug Involvement). 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 *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing (AR) on December 23, 2010, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on March 2, 2011, and the case was assigned to me on April 7, 2011. DOHA issued a Notice of Hearing on April 18, 2011, and I convened the hearing as scheduled on May 12, 2011. The Government offered exhibits (GE) 1 through 10, which were admitted over Applicant's objection that evidence concerning his marijuana use during high school should be excluded as irrelevant.¹ Applicant offered exhibits (AE) A through M, which were admitted without objection, and testified on his own behalf. I granted Applicant's request to leave the record open until June 6, 2011, for submission of additional evidence. On May 20 and 23, 2011, Applicant submitted additional evidence that was marked AE N, and admitted without objection. DOHA received the transcript of the hearing (Tr.) on May 24, 2011. No further evidence was submitted, and the record was closed as scheduled.

Findings of Fact

Applicant is a 30-year-old employee of a defense contractor, where he has worked since October 2006. He was honorably discharged from the Navy in September 2006 after 8 years of active enlisted service that started shortly after his graduation from high school. He has held security clearance since 2002. He is married, with a nine-year-old son.² In his response to the SOR, Applicant denied all of the factual allegations in SOR ¶ 1, concerning financial issues, and admitted the allegations in SOR ¶ 2 concerning drug involvement.³ Applicant's admissions, including his statements in response to DOHA interrogatories,⁴ and his sworn statement to a Defense Security Service special agent on October 30, 2002,⁵ are incorporated in the following findings.

During their last change of duty stations in the Navy, Applicant and his wife lost track of a few relatively small debts. When they were brought to Applicant's attention through his receipt of interrogatories from DOHA, he promptly resolved the \$533 credit card debt alleged in SOR ¶ 1.a, the \$2,253 consumer debt alleged in SOR ¶ 1.d, and two other charged-off credit card accounts for \$1 and \$652 that were not listed on the SOR. Despite substantial efforts to do so, he was unable to identify the creditor involved with the \$174 debt alleged in SOR ¶ 1.b. That debt only appears on the oldest credit report in the record, on which it was reported to be delinquent since March 2003. It does not appear on any later credit reports. Applicant has never been contacted by anyone

¹Discussion and ruling on the objection are at Tr. 27-32.

²GE 1; GE 2; Tr. 6, 23, 67.

³AR.

⁴GE 2; GE 3; GE 4; GE 5.

⁵GE 6.

attempting to collect this debt, and he has no recollection of any dealings with the listed creditor.⁶

Applicant disputes the \$15,370 debt to the Defense Finance and Accounting Service (DFAS) alleged in SOR ¶ 1.c. He was involuntarily discharged from the Navy in 2006 as a result of reaching high-year tenure of eight years as an enlisted member in paygrade E-4. He was otherwise fully eligible and recommended for reenlistment, and had requested to do so. According to applicable regulations, he should have been entitled to full separation pay, which would have been around \$20,000 before taxes. Applicant was one of more than 300 sailors who were discharged from the aircraft carrier to which he was assigned during September 2006, resulting in some errors by the personnel office. Applicant was placed on 30 days of terminal leave, after which he mailed his active duty identification card back to the ship. His discharge was supposed to be effective September 14, 2006, and the ship's personnel office was supposed to mail him his discharge certificate (DD-214) upon receipt of his identification card. That never happened, and his multiple attempts to contact the ship for assistance were unsuccessful over the next several years. Finally, in 2009, he was told that he would have to contact the Navy Personnel Command (NPC) to request a DD-214. He received a response from NPC dated August 5, 2009, informing him that there was no DD-214 in his official military personnel file and advising him to contact another office within NPC to request a reissued DD-214. He did so, and NPC reissued him a DD-214 on March 16, 2011. This DD-214 contained an incorrect Separation Code and an incorrect Reentry Code which, if correct, would indicate that Applicant was only eligible to receive 50% of full separation pay. Applicant has been diligently working with various Navy offices to attempt to correct these errors. He provided complete documentation supporting the validity of his position and entitlement to full separation pay, as well as his ongoing attempts to convince the bureaucracy of the errors involved.⁷

Another consequence of Applicant's incomplete discharge processing was that DFAS continued paying him through direct deposits, as though he remained on active duty, for the period from September 2006 through January 31, 2007. Applicant contacted DFAS about this problem several times, but was told that they had no record that he was out of the service. For a reason unknown to Applicant, these payments stopped at the end of January 2007 and DFAS subsequently notified him that he had been overpaid by \$14,731 and he was indebted to the Government in that amount. That total also included recoupment of part of a Selective Reenlistment Bonus he had previously received. On June 29, 2007, he wrote a letter to DFAS explaining that his alleged overpayment should be offset by the amount of unpaid separation pay to which he was entitled. DFAS responded to Applicant with an undated letter that gave him credit for half of the full separation pay to which he was entitled, reducing his balance due to \$7,910. This reduced amount is reflected in his May 10, 2011 credit report. Applicant then offered to compromise the disputed debt for a one-time payment of

⁶GE 4; GE 7 through 10; Tr. 68-74.

⁷AR; GE 3; AE B through E; AE G through K; AE N; Tr. 39-53, 56-61.

\$1,500. DFAS rejected this offer in a letter dated May 5, 2011, and put him on a repayment plan of \$309.75 per month toward an outstanding balance of \$10,685 that includes interest and penalties. Applicant's first monthly payment under this plan was due on June 4, 2011. He made that payment by money order on May 18, 2011. He intends to continue complying with the repayment plan until he convinces the Navy to correct his DD-214 and credit him with the other half of the separation pay he should have received.⁸

Applicant's personal financial statement reflects a monthly surplus of \$380, without including net income of about \$600 per month that his wife earns in a job she started after he submitted the statement. They have about \$800 in savings, and Applicant has saved about \$30,000 in a 401(k) account. Although they have not undergone any formal financial counseling, they have become much more careful and organized in managing their budget and bills in order to prevent any recurrence of delinquent debt.⁹

Applicant experimented with smoking marijuana a few times while he was in high school. His initial urinalysis test taken when he entered the Delayed Entry Program in 1996, at age 16, was positive for marijuana. He never used marijuana while in the Navy, or after leaving the Navy except for one time on or about July 25, 2008. During a weekend camping trip with some former friends, Applicant smoked some marijuana that one of the other campers provided and passed around. He did so after having a few drinks, and due to peer pressure. He regretted having done so the next morning. During the following week, Applicant's employer announced that all employees would be subject to an unannounced urinalysis drug test. Applicant immediately told his supervisor that he had used marijuana the previous weekend and might test positive. His employer treated this as a self-referral, and told him to go ahead and take the test. His urine tested positive for marijuana, at a low level. He underwent a drug evaluation by a counselor at his company's Employee Assistance Program (EAP), who determined that there was no need for substance abuse treatment. Applicant successfully completed a six-session EAP counseling program from August through October 2008. He has subsequently tested negative for drugs and alcohol on unannounced random urinalysis tests during September 2008, December 2008, December 2009, June 2010, and October 2010. He also tested negative on a series of urinalysis tests administered in connection with an investigation into a job-related injury. He no longer sees the former friends with whom he smoked the marijuana, is extremely remorseful for having done so, and sincerely and credibly expressed his intention never to illegally use drugs in the future. He also signed a letter to that effect, agreeing to automatic revocation of his clearance for any future violation.¹⁰

⁸GE 3; GE 4; GE 7; AE E; AE F; AE N; Tr. 47-56.

⁹GE 4; Tr. 74-85.

¹⁰AR; GE 2; GE 5; GE 6; AE A; AE N; Tr. 38-39, 86-103.

Applicant's facility security manager submitted a letter praising his dedication, loyalty, dependability, and general good character. He also described Applicant's professional and personal growth over the past four-and-a-half years, while working extremely hard to apply positive lessons learned from his mistakes and showing great remorse for his lapse in judgment in July 2008. Applicant's performance evaluations reflect steadily improving technical competence and satisfactory performance.¹¹ His demeanor during the hearing was pleasant, open, sincere, and straightforward. His testimony was credible.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions (DCs) and mitigating conditions (MCs), which are to be 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching 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 applicable guidelines in the context 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 the 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, "[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant 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."

A person applying for access to classified information seeks to enter into a fiduciary relationship with the Government predicated upon trust and confidence. This

¹¹AE L; AE M.

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

The security concerns relating to the guideline for financial considerations are 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 evidence raised initial security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

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

There is no evidence of frivolous or irresponsible spending, deceptive or illegal financial practices, or financial issues caused by any misconduct on Applicant's part. Three of his four SOR-alleged financial problems were minor bills that became delinquent when he and his wife lost track of them during their last Navy change of duty stations. He promptly resolved two of them, and two other small credit card debts, when he became aware of them through DOHA financial interrogatories. The final \$174 debt could not be resolved because the creditor could not be identified despite diligent efforts to do so. This debt was last reported in 2003, has not been pursued by any creditor, and no longer appears on Applicant's credit reports. Applicant is complying with an agreed repayment plan concerning his alleged DFAS debt, while still actively pursuing his extensive efforts to correct the personnel office errors that led to the problem. The evidence establishes Applicant's temporary failure to satisfy some of his debts, and a history of not meeting a few minor financial obligations, thereby shifting the burden to him to prove mitigation.

The guideline includes five MCs in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial problems:

- (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; and
- (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.

Applicant incurred a modest amount of delinquent debt when he lost track of a few bills during a Navy move. He promptly resolved all but one of them upon learning that they were on his credit report. The unresolved debt was listed only on his oldest credit report, to a creditor he does not recognize and could not locate. Only \$174 was involved, and this is too old and minor to support security concerns in light of his actions to resolve all other debts. He has no plans to move again, and earns sufficient income (together with his wife's) to avoid delinquencies in the future. The circumstances giving rise to these debts do not cast doubt on Applicant's present reliability, judgment, or trustworthiness. The evidence establishes significant mitigation under AG ¶ 20(a).

Mitigation under AG ¶ 20(b) was also established with respect to the only significant debt alleged in the SOR, involving DFAS. Applicant has spent the past five years trying to overcome a nightmare series of errors by the personnel department on his last ship and his resulting pay problems. He has actively and diligently pursued official channels to correct those errors, with partial success to date. He has entered a repayment plan agreement with DFAS to show good faith while he continues to seek credit for the other half of the separation pay to which he is demonstrably entitled.

Applicant has not undergone personal financial counseling, but he offered documentation to establish clear indications that his former problems have been or are being resolved, and that his financial situation is under control. Thus, substantial

mitigation was also established under AG ¶¶ 20(c) and (d). Applicant fully documented his legitimate basis to dispute the debt to DFAS alleged in SOR ¶ 1.c, as well as his significant efforts to resolve the issue, so any security concerns related to that debt are also mitigated under AG ¶ 20(e).

As the Appeal Board has ruled concerning the successful mitigation of security concerns arising from financial considerations, “[a]n applicant is not required to show that [he] has completely paid off [his] indebtedness, only that [he] has established a reasonable plan to resolve [his] debts and has ‘taken significant actions to implement that plan.’”¹² This applicant has fully met this standard by resolving almost all of his former delinquencies, and complying with a DFAS repayment agreement while continuing his legitimate efforts to dispute that debt.

Guideline H, Drug Involvement

AG ¶ 24 expresses the security concern pertaining to drug involvement:

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. The DCs raised by the evidence in this case include:

(a) any drug abuse (see above definition);

(b) testing positive for illegal drug use; and

(g) any illegal drug use after being granted a security clearance.

¹²ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006)).

Applicant smoked marijuana in late July 2008 while employed in his current position and holding a security clearance. He tested positive for this use on a urinalysis test. He had also smoked marijuana a few times about 15 years ago while in high school, and tested positive for marijuana on a pre-enlistment urinalysis given upon joining the Navy's Delayed Entry Program in 1996. These facts support application of the foregoing DCs, and shift the burden to Applicant to prove mitigation of resulting security concerns.

AG ¶ 26 provides conditions that could mitigate security concerns:

(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.

Applicant's high school marijuana experimentation was over 15 years ago, was infrequent, and does not cast doubt on his current reliability, trustworthiness or judgment as established by his many intervening drug-free years. His single use in 2008 took place while camping with old friends who convinced him to share some of their marijuana after he had a few drinks. He realized the wrongfulness of this conduct almost immediately, and has ended all similar activities and contact with those friends. Even when viewed together with his high school experimentation, Applicant's marijuana use was very infrequent and happened so long ago that it does not cast substantial doubt on his current judgment, reliability, or trustworthiness. His demonstrated remorse and credible expression of resolve convince me that such behavior is highly unlikely to recur. Some mitigation under AG ¶ 26(a) was accordingly established.

Department Counsel suggested that Applicant's testing positive on urinalysis tests in 1996 and 2008, shortly after two of his admitted three to six possible lifetime uses of marijuana was suspicious, and could support an inference of more substantial, un-admitted drug abuse.¹³ While such an inference might be supportable under other circumstances, I do not find it to be one that should properly be drawn under the totality of the evidence in this case. That evidence is insufficient to support a finding of more extensive drug abuse than that to which Applicant candidly admitted.

Applicant has completely disassociated from drug-using former friends and contacts, and no longer engages in recreational activities where peer pressure to use marijuana might exist. The evidence, including numerous urinalysis tests, indicates that he has been abstinent since July 2008. He also submitted a statement of intent to never abuse drugs in the future with automatic revocation for any violation. These facts establish additional mitigation under AG ¶ 26(b).

The drug abuse in this case did not involve prescription drugs, so AG ¶ 26(c) has no bearing on this decision. Applicant has not participated in any drug treatment program, but did successfully complete the EAP counseling that was recommended after his substance abuse evaluation. He was never diagnosed with drug dependence or abuse, or recommended for treatment. No favorable prognosis by a duly qualified medical professional was provided, however, so minimal mitigation was established under AG ¶ 26(d).

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 relevant 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.

¹³Tr. 107.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a hard-working and dedicated employee. He had fully repaid all but two of his formerly delinquent minor debts several months before the SOR was issued, and has since reached an agreement to make payments toward the DFAS debt while he continues to dispute it. He has sufficient income and savings to continued resolution of his one remaining allegedly delinquent debt, without the risk of incurring additional debt. He has submitted documentation through appropriate channels that clearly establishes this debt resulted from personnel office errors during his discharge process, and that he will ultimately be entitled to additional funds from DFAS rather than owing money to them.

Applicant is a mature and experienced individual, who is fully accountable for his situation and intends to continue resolving his obligations. The potential for pressure, coercion, exploitation, or duress is minimal, and he has demonstrated a pattern of financial responsibility and ability to remain solvent in the future. He made one bad decision in July 2008 to share some marijuana with old friends with whom he went camping for a weekend. He has since compellingly demonstrated his remorse over that choice, his determination to never abuse drugs in the future, and lifestyle changes necessary to be successful. The likelihood of future financial troubles or drug abuse is minimal.

Overall, the record evidence creates substantial confidence as to Applicant's present eligibility and suitability for a security clearance. He fully met his burden to mitigate the security concerns arising from his financial considerations and drug involvement.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a through 1.d:	For Applicant
Paragraph 2, Guideline H:	FOR APPLICANT
Subparagraphs 2.a through 2.d:	For 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.

DAVID M. WHITE
Administrative Judge