



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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)
-----) ISCR Case No. 08-11735
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: *Pro se*

June 30, 2010

Decision

WESLEY, Roger C., Administrative Judge:

Statement of the Case

On September 14, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing reasons why DOHA could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. 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 (AGs) promulgated by the President on December 29, 2005.

Applicant responded to the SOR on October 27, 2009, and elected to have his case decided on the basis of the written record. Applicant received the Government’s File of Relevant Material (FORM) on March 18, 2010, and responded with additional information within the 30 days permitted. The case was assigned to me on April 27, 2010. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Summary of Pleadings

Under Guideline F, Applicant is alleged to have (a) been charged and convicted of forgery in March 2002 and (b) accumulated 32 delinquent debts exceeding \$33,000.

Under Guideline E, Applicant is alleged to have demonstrated questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations by virtue of his (a) actions covered by his 2002 forgery conviction, (b) his January 2004 charge and conviction for driving while ability impaired, and (c) his being stopped and cited on at least three different occasions for driving without a valid driver's license.

In his response to the SOR, Applicant denied his forgery charge and conviction. He claimed he was charged and convicted of writing bad checks in August 2002 and received a deferred sentence (since completed). He admitted many of the alleged delinquent debts. He claimed most of these debts were paid in full, or covered by payment plans. He also denied the legitimacy of many of the alleged debts, claiming there is no record of any these debts in his updated October 2009 credit report.

Applicant admitted his driving while impaired arrest. He admitted having a suspended license on the occasions he was stopped and cited, but offered explanations. He claimed his license violations were correctable ones and do not cast doubt on his reliability, trustworthiness, or good judgment.

Findings of Fact

Applicant is a 30-year-old systems administrator for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant are adopted as relevant and material findings. Additional findings follow.

Applicant enlisted in the U.S. Army after graduating from high school in 1997. He served on active duty with the Army between April 1998 and April 2001, and was honorably discharged in April 2001. Item 1. Applicant married in April 2001 and has one child from this marriage. He and his wife separated in January 2002. See Item 6.

Finances

Following his Army discharge, Applicant encountered difficulties finding work. He was unemployed between June 2001 and August 2001. While he was unemployed, he lived with his parents (Item 7), and essentially lived paycheck-to-paycheck during this period. To defray his living expenses, he opened multiple checking accounts, using fictitious names and social security numbers. See Item 7.

During late 2001 and early 2002, he opened three different checking accounts using fake identification (IDs) for each of the accounts. See Item 11. Typically, he wrote checks on these accounts that ranged in amounts from \$250 to \$350 a check. Item 7. He made each of the checks out to "cash," forged his signature on these fake

accounts and cashed the checks. With the proceeds, he took care of his living expenses. Item 7.

Applicant used each fake bank account he created for approximately five days in a row. Item 7. When he made the mistake of using the same account for seven days (in March 2002), he was caught, arrested, and charged with forgery (a felony).

For the first six months following his April 2001 separation, Applicant relied mostly on his parents for income. Over the course of the ensuing five years, he worked sporadically on term job assignments that would last anywhere from one week to three months in duration.

Between March 2002 and May 2003, Applicant was unemployed. Without income, he fell further behind with his bills. Records document that between June 2001 and May 2003, Applicant accumulated about 32 delinquent debts exceeding \$33,000.

In December 2002, Applicant was informed by an anonymous postal letter that his separated spouse had given birth to a baby. After several unsuccessful attempts to get back together, he and his wife reunited in January 2004.

Applicant has since become gainfully employed. Since his deployment to Iraq with his present employer in 2007, Applicant has paid off most of his listed debts. He documents fully paid receipts for seventeen of his listed debts totaling \$16,950 in eliminated delinquent accounts. Specifically, he documents payment in full of the creditor 1.b debt (AE 4), creditor 1.c (AE 5), creditors 1.d through 1.g (AE 6), creditor 1.j (AE 7), creditors 1.i through 1.o (AE 10), creditor 1.q (AE11), creditors 1.u through 1.x (AE 12), and creditor 1.ff (AE 13). These payments are not yet reflected in Applicant's most recent credit report. See AE 1.

However, Applicant does not provide any documentation of payment of his remaining debts listed in the SOR. While most of his still delinquent accounts report small balances (*i.e.*, creditors 1.h and 1.i, creditor 1.p, creditors 1.r through 1.t, and creditors 1.y through 1.ee), several are large: notably creditor 1.k (\$1,361), creditors 1.r through 1.t, creditor 1.y (\$7,326), and creditor 1.gg (\$3,135). Applicant claimed no knowledge of any of these debts listed on his credit reports and denies any debts due to these creditors. See Item 4. These debts are not reported in his most recent credit report, but are not otherwise explained. He provides no letters or other evidence, though, of inquiring about these reported debts from the listed creditors or challenging the debts with the credit reporting agencies.

Applicant currently reports a net monthly income of \$9,166 and monthly expenses of \$3,592. See AE 14. He reports a net monthly remainder of \$4,407.

Applicant's forgery conviction, while somewhat dated, still reflects concerted attempts by Applicant to misappropriate funds (by writing on forged or fictitious accounts) he was not entitled to. He completed his probation conditions in 2007.

Alcohol-related offense and traffic citations

In January 2004, Applicant was charged with driving under the influence (DUI) while driving home from work. He had consumed approximately six drinks after his shift and made a regrettable decision to drive home. See Item 7. While driving home, he was confronted by a male driver in another car at a stop light. Applicant and this driver engaged in a race with their vehicles. At one point, they were traveling at high rates of speed and became involved in an accident that culminated in Applicant's rolling his vehicle. See Item 7.

The police officer who investigated the accident asked Applicant for his drivers license and vehicle registration. When Applicant could not produce his license and registration (claiming he lost his wallet), the investigating officer charged Applicant with a fictitious license plate and escorted him to a local hospital for treatment. Once inside the hospital, Applicant submitted to a blood alcohol test. After registering a blood alcohol level that suggested he was impaired, the police officer transported Applicant to a local jail where he was charged with DUI and released.

Following his release from jail, Applicant returned to the scene of the accident to search for his wallet. Item 7. He found his wallet in the grass about 20 feet from the site where his car came to a rest.

At his hearing in 2003, Applicant pled guilty to a reduced charge of driving while ability impaired (DWAI) and was sentenced to two years in jail (deferred) and ordered to perform 24 days of community service. Applicant, in turn was assigned a court date to assess his compliance with the court's conditions. His deferred sentence was conditioned on the following: 40 hours of community service and completion of a Level II alcohol education class.

Following several appearances in court without his attorney present, the court ordered Applicant to serve 45 days in jail. Applicant was credited with serving 45 days of jail time between September 2007 and October 2007. The court also credited him with completing his other pre-trial conditions and dismissed the DWAI charges. Item 7.

Between July 2005 and April 2007, Applicant was cited on three occasions for driving without a license, or on a suspended license. In July 2005, he was cited for driving without a license and driving under denied conditions. Item 7. By all accounts, he paid the imposed fines.

In his answer and post-hearing response, Applicant claimed that he had a valid license from another state when stopped by in-state police on each of the three occasions in which he was stopped by police. See Items 4 and 7. He provided no documentation, however, to corroborate his claims. He assured, though, that he has since surrendered his out-of-state driver's license to his state's driving authority, and anticipates no future citations for not having a valid state license.

Applicant provides several endorsement letters and a certificate of appreciation. See Items 19 through 24.

Policies

The AGs list guidelines to be used by administrative judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns." These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole-person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the revised AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following AG ¶ 2(a) factors: (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.

Viewing the issues raised and evidence as a whole, the following individual guideline is pertinent in this case:

Financial Considerations

The Concern: 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts. AG ¶ 18.

Personal Conduct

The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, 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. AG, ¶ 15.

Burden of Proof

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *Kungys v. United States*, 485 U.S. 759, 792-800 (1988). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. "[S]ecurity-clearance determinations should err, if they must, on the side of denials." See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Applicant is a systems administrator who accumulated a number of delinquent debts during periods of unemployment and underemployment. His accumulation of delinquent debts, and his use of fictitious checking accounts to cover his expenses

during periods of financial difficulty and his unwillingness to address his delinquent debts warrant the application of two of the disqualifying conditions (DC) of the Guidelines: DC ¶ 19(a), "inability or unwillingness to satisfy debts," and ¶19(c) "a history of not meeting financial obligations."

Applicant's acknowledged debts are attributable to his experiencing financial problems during periods of unemployment between June 2001 and May 2002. Based on the documented materials in the FORM, some extenuating circumstances are associated with Applicant's inability to pay off or otherwise resolve his debts. As a result, MC ¶ 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," is partly available to Applicant.

Applicant's use of fictitious checking accounts to sustain him during periods of unemployment are not easily reconcilable with eligibility requirements for holding a security clearance. Moreover, some judgment problems persist, too, over Applicant's unexplained delinquencies and his failure to demonstrate he acted responsibly in addressing his listed debts before he received the SOR. See ISCR Case 03-01059 at 3 (App. Bd. Sep. 24, 2004). Not only are several of his listed debt delinquencies still unresolved, but he has failed to document any disputes with the underlying creditors and credit reporting agencies. Probative evidence of mitigation is not demonstrated by Applicant based on available documentation.

Holding a security clearance involves a fiduciary relationship between the Government and the clearance holder. Quite apart from any agreement the clearance holder may have signed with the Government, the nature of the clearance holder's duties and access to classified information necessarily imposes important duties of trust and candor on the clearance holder that are considerably higher than those typically imposed on Government employees and contractors involved in other lines of Government business. See *Snepp v. United States*, 444 U.S. 507, 511 n.6 (1980). Failure of the applicant to make concerted efforts to pay or resolve his debts raises security-significant concerns about whether the applicant has demonstrated the trust and judgment necessary to safeguard classified information.

Whole-person assessment does not enable Applicant to surmount the judgment questions raised by his accumulation of delinquent debts, and his use of fictitious checking accounts to pay his bills during periods of unemployment and financial difficulties. While he has since completed his probation conditions and repaid most of his listed delinquent debts, he has not established any seasoned track record for paying his debts and overcoming trust doubts attributable to his forgery conviction. Bringing closure to those listed debts he disputes is a critical prerequisite to his regaining control of his finances and mitigating financial concerns.

While Applicant's endorsement letters and certificate of appreciation are helpful in evaluating his overall judgment and trustworthiness, they are not enough to overcome the trust deficiencies manifest from his delinquent account history and forgery conviction. Overall, a clearance eligibility assessment of Applicant based on

the limited amount of information available for consideration in this record does not enable him to establish judgment and trust levels sufficient to overcome security concerns arising out of his accumulation of delinquent debts and forgery conviction.

Taking into account all of the documented facts and circumstances surrounding Applicant's debt accumulations, his lack of explanations for his challenged debts, and his forgery conviction, it is too soon to make safe predictive judgments about Applicant's ability to repay his debts and restore his finances to acceptable levels commensurate with the minimum requirements for holding a security clearance.

Unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a, 1.h through 1.i, 1.k, 1.p, 1.r through 1.t, 1.y through 1.ee, and 1.gg. Favorable conclusions are warranted with respect to the remaining allegations covered by subparagraphs 1.b through 1.g, 1.j, 1.l through 1.o, 1.q, 1.u through 1.x, and 1.ff.

Personal Conduct concerns

Judgment and trustworthiness concerns exist over Applicant's demonstrated pattern of judgment and trust lapses associated with his writing checks on fictitious checks over a two-year period between 2001 and 2002. Concerns are also raised about the circumstances associated with his 2004 alcohol-related conviction and his traffic convictions involving his driving on an invalid out-of-state license. Together, these three incidents reflect pattern deficiencies in the exercise of good judgment and maintenance of trustworthiness.

Applicant's actions are expressly covered by Guideline E, and are entitled to cognizance under this Guideline according to the Appeal Board. See ISCR Case No. 06-20964, at 6 (App. Bd. April 10, 2008). Where (as here) there is probative adverse information covered by Guideline E which reflects a recurring pattern of questionable judgment use, trust breaches, or candor lapses, grounds exist for considering the allegations covered by Guideline E.

Under Guideline E, two disqualifying conditions are specifically applicable to Applicant's situation. Both DC ¶ 16(d), "credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information 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," and DC ¶ 16(f), "violation of a written or recorded commitment made by the individual to the employer as a condition of employment," have some application to the facts of the case.

Based on his explanations for his traffic citations and the age of his alcohol-related conviction, Applicant is entitled to take some advantage of MC ¶ 17(d), "the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or

factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur,” and MC ¶ 17(e), “the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress,” of the personal conduct guideline. His forgery conviction, however, reflects a pattern of deceit and fraud that cannot be easily reconciled with the trustworthiness requirements for clearance holders.

Whole-person assessment does not enable Applicant to surmount the judgment and trust questions raised by his forgery conviction. His endorsement letters and training certification are favorable to him and warrant consideration when evaluating his overall reliability and trustworthiness. It is too soon, though, to absolve Applicant from questions about his trustworthiness that have resulted from his forgery conviction.

Applicant does not mitigate security concerns raised under the personal conduct guideline. Unfavorable conclusions are warranted with respect to the allegations covered by subparagraph 2.a. Favorable conclusions warrant with respect to the allegations covered by subparagraphs 2.b and 2.c.

In reaching my decision, I have considered the evidence as a whole, including each of the factors enumerated in AG 2(a).

Formal Findings

In reviewing the allegations of the SOR, I make the following formal findings:

GUIDELINE F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT

Subpara. 1.a:	Against Applicant
Subparas. 1.b through 1.g:	For Applicant
Subparas. 1.h and 1.i:	Against Applicant
Subpara. 1.j:	For Applicant
Subpara. 1.k:	Against Applicant
Subparas. 1.l through 1.o:	For Applicant
Subpara. 1.p:	Against Applicant
Subpara. 1.q:	For Applicant
Subparas. 1.r through 1.t:	Against Applicant
Subparas. 1.u through 1.x:	For Applicant
Subparas. 1.y through 1.ee:	Against Applicant
Subpara. 1.ff:	For Applicant
Subpara. 1.gg:	Against Applicant

GUIDELINE E (PERSONAL CONDUCT): AGAINST APPLICANT

Subpara. 2.a:	Against Applicant
Subpara. 2.b:	For Applicant
Subpara. 2.c:	For Applicant

Conclusions

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is denied.

Roger C. Wesley
Administrative Judge

