



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-02258
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel

For Applicant: *Pro se*

June 30, 2010

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on October 23, 2008. (Government Exhibit 1.) On July 21, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the security concerns under Guidelines F (Financial Considerations), H (Drug Involvement), G (Alcohol Consumption), J (Criminal Activity) and E (Personal Conduct). 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 (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant submitted an Answer to the SOR on August 6, 2009, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on August 28, 2009. I received the case assignment on September 2, 2009. DOHA issued a notice of hearing on September 14, 2009, and I convened the hearing as

scheduled on October 21, 2009. The Government offered Government Exhibits 1 through 6, which were received without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing on October 30, 2009. The record closed on October 21, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

Applicant is 44, and married. He is employed by a defense contractor and seeks to obtain a security clearance in connection with his employment.

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleges that Applicant is ineligible for clearance because he is financially overextended and therefore at risk of having to engage in illegal acts to generate funds. Applicant admits all of the allegations in the SOR under this paragraph. Those admissions are hereby deemed findings of fact. He also submitted additional testimony supporting his request for a security clearance.

The SOR alleges, and Government exhibits substantiate, 27 delinquent debts totaling \$52,657. (SOR 1.a. through 1.aa.) Some of these debts have been due and owing since 2002-2003. (Government Exhibits 2, 4, 5 and 6.)

Applicant states that his poor financial situation is primarily due to a long history of drug and alcohol abuse. He stopped using alcohol and drugs in 2005, but has been unable to pay any of his past due debts since then. He affirmed at the hearing that none of the debts listed in the SOR have been paid. He has contemplated declaring bankruptcy, but has not done so as of the date of the hearing. (Transcript at 30-33, 52-54.)

Paragraph 2 (Guideline H, Drug Involvement)

Paragraph 3 (Guideline G, Alcohol Consumption)

Paragraph 4 (Guideline J, Criminal Conduct)

The Government alleges in Paragraph 2 that the Applicant is ineligible for clearance because he uses illegal drugs.

The Government further alleges in Paragraph 3 that the Applicant is ineligible for clearance because he uses intoxicants to excess.

The Government also alleges in Paragraph 4 that the Applicant's conduct, as set forth under subparagraphs 2.a. through 2.e., and 3.a. through 3.f., below, is also criminal conduct. These allegations will be evaluated under this guideline as well.

Applicant admits all of the allegations in the SOR under these paragraphs. Those admissions are hereby deemed findings of fact. He also submitted additional testimony supporting his request for a security clearance.

Applicant admits to having a long history of drug abuse, extending from December 1986 to January 2005. (SOR 2.a. through 2.e.) He used marijuana, barbiturates and crystal methamphetamine during this time. From June 2004 until January 2005, Applicant used one to two grams of crystal methamphetamine a day. Applicant has not used any illegal drugs since January 2005, as further discussed below.

Applicant was charged with drug related crimes in 1986, 1993, 1994 and 2005. (Government Exhibit 2 at 17–19.) His last arrest occurred in January 2005, when he was charged with possession and use of a dangerous drug, possession and use of marijuana, and possession of drug paraphernalia. As part of a plea agreement, Applicant successfully attended a year long drug treatment program, and the charges were dismissed. (SOR 2.f.) (Government Exhibit 2 at 19, Exhibit 3; Transcript at 34-35, 51-52.)

Applicant was also charged with alcohol related crimes in 1986, 1987, 1989, 1990, and twice in 1993. All of these offenses were for Driving Under the Influence of Alcohol. (SOR 3.a. through 3.f.) Applicant began using alcohol in 1978. He often drank to the point of intoxication until he stopped drinking altogether in 2005. (Government Exhibit 2 at 24-25, Exhibit 3; Transcript at 42-43.)

Applicant had not used drugs or alcohol for over four years as of the date of the hearing. In addition to the treatment discussed above, the Applicant attends church and support meetings like Alcoholics Anonymous (AA) on a regular basis. Applicant testified passionately and credibly about the usefulness of AA in his life, how he has recovered from his addiction and enjoys his life, and his intention never to drink or use drugs again. (Transcript at 34-43.)

Paragraph 5 (Guideline E, Personal Conduct)

The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has made false statements to the Department of Defense during the clearance screening process. Applicant admitted to both factual allegations under this guideline, but denied that his conduct amounted to a deliberate falsification. (SOR 5.a. and 5.b.)

5.a. In 2008, the Applicant filled out an Electronic Questionnaire for Investigations Processing (e-QIP). (Government Exhibit 1.) Question 27 asks the Applicant if, in the last seven years, he had any judgments against him that had not been paid. The Applicant answered “No.” This was an incorrect answer, as in January 2002 a judgment had been entered against the Applicant in the amount of \$1,482 by the landlord of an apartment building. (SOR 1.a.)

With regards to his financial situation, the Questionnaire shows, at question 28, Applicant going to great pains to tell the Government about the debts he owes. Fully 17 debts are discussed, going back to 2002, of which several are for more money than that owed on the judgment.

5.b. Question 23 of Government Exhibit 1 consists of six subquestions, 23.a. through 23.f. Applicant answered "Yes" to subquestion 23.a., and discussed his 2005 arrest for Possession of Drugs, discussed above under SOR 2.a.

Subquestion 23.d. asks the Applicant whether he had ever been charged with or convicted of any offense(s) related to alcohol or drugs. He answered "No." This was a false answer to a relevant question concerning the Applicant's arrest history.

Applicant has consistently maintained that he did not falsify his answers on this questionnaire. He frankly admits that his long history of drug and alcohol abuse makes him unable to remember many incidents that happened in his past. He states that "over a 24-year span . . . I wasn't good with dates." (Transcript at 24.) He further stated, "You know, this is the life that I was living and that's what occurs when you live that kind of life. But at no time was I trying to hide, not be truthful with anything." (Transcript at 25.)

In addition, Applicant also stated that he misunderstood question 23. In particular, "on the question where it asked - - in seven years, have you done any of this - - and I answered what I answered and then the following question was - - Have you ever - - I misunderstood that for the seven years." (Transcript at 23-24.) (See Government Exhibit 2; Transcript at 44-51.)

His answers on the Security Clearance Application were true, if somewhat incomplete. He admitted most of the major events, including his 2005 drug arrest and the vast majority of his debts. Under the particular facts of this case, I do not find that his answers were false, or that they were intended to mislead the Government in any way. This paragraph is found for the Applicant as the Government has failed to show that any deliberate falsehood was made.

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 to be used as appropriate 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 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

Paragraph 1 (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. Applicant, by his own admission, has over \$52,000 in past due debts, all of which have been due and owing for several years. The 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. 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." Applicant's financial difficulties arose recently, starting about 2003, and continue to the present. In addition, Applicant has failed to provide any evidence that he is paying any of his debts, or has any plan to do so. It is Applicant's burden to submit evidence showing that his financial situation has improved. He has not done so. This mitigating condition is not applicable to this case.

Applicant has not initiated a good-faith effort to pay off his creditors. There is no track record of his making payments for a consistent period of time. Accordingly, AG ¶ 20(d) is not applicable. Finally, given the fact that he is \$52,000 in debt, I cannot find that "there are clear indications that the problem is being resolved or is under control," as required by AG ¶ 20(c). Paragraph 1 is found against the Applicant.

Paragraph 2 (Guideline H, Drug Involvement)

The security concern relating to the guideline for Drug Involvement is set out in AG ¶24:

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability or 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.

The Applicant used marijuana, barbiturates and crystal amphetamine for several years. His drug use ended in 2005, upon his last drug related arrest. He has credibly and repeatedly expressed his determination not to use illegal drugs in the future.

Two disqualifying conditions have application in this case. AG ¶ 25(a) "Any drug abuse"; and, AG ¶ 25(c) "Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia."

I have considered all the evidence in the record and find that two mitigating conditions also have application, and justify a finding for the Applicant on this allegation. 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.”

Also, AG ¶ 26(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; (4) a signed statement of intent with automatic revocation of clearance for any violation.

I have also considered the Applicant’s compelling testimony about his proper use of support groups to help him maintain sobriety. Paragraph 2 is found for the Applicant.

Paragraph 3 (Guideline G, Alcohol Consumption)

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 Applicant was involved in several alcohol related incidents between 1986 and 1993. The evidence also shows that the Applicant has used alcohol, usually to excess, from about 1978 until January 2005. He has not drank since that date.

There are two disqualifying conditions that arguably apply 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.” In addition, AG ¶ 22(c) states a concern is, “Habitual or binge consumption of alcohol to the point of impaired judgment, 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 apply to the Applicant’s situation. AG ¶ 23(a) states that it can be mitigating 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) states that is mitigating 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.” Applicant has repeatedly and compellingly stated that he is now clean

and sober, that he enjoys his life, and has no intention of returning to the life he once had. He regularly attends AA and takes its requirements to heart. This guideline is also found for Applicant.

Paragraph 4 (Guideline J, Criminal Conduct)

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 has been involved in a series of alcohol and drug related arrests. As set forth above, these incidents ended in 2005 and the Applicant has no intention of engaging in any such conduct in the future.

Under the Criminal Conduct guideline, the following Disqualifying Condition is applicable. AG ¶ 31(a) "A single serious crime or multiple lesser offenses."

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." As set forth at length above, the Applicant has turned his life around and is not the person who engaged in this criminal conduct. This guideline is found for the Applicant.

Paragraph 5 (Guideline E, Personal Conduct)

As discussed above, Paragraph 5 is found for the Applicant.

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 relevant 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 must 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. Applicant is under financial strain, and has been so for several years. His debt situation is not yet under control. Under AG ¶ 2(a)(3), Applicant's conduct is recent. Based on the state of the record, I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, at the present time, I find that there is the potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); and that there is a high likelihood of recurrence (AG ¶ 2(a)(9)).

The Applicant has made great strides in his life over the last several years. As shown, he has mitigated the security significance of his drug and alcohol history, as well as the related criminal concerns. However, he has not made the same strides with respect to his financial history. If he resolves his financial situation, he may be eligible for a clearance in the future. He is not eligible now. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial situation.

On balance, I conclude that Applicant has not successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a denial of his request for a security clearance. Accordingly, Paragraph 1 is found against the Applicant. As stated above, Paragraphs 2, 3, 4, and 5 are found for the Applicant.

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: AGAINST THE APPLICANT

 Subparagraphs 1.a. through 1.aa.: Against the Applicant

Paragraph 2, Guideline H: FOR THE APPLICANT

 Subparagraphs 2.a. through 2.f.: For the Applicant

Paragraph 3, Guideline G: FOR THE APPLICANT

 Subparagraphs 3.a. through 3.f.: For the Applicant

Paragraph 4, Guideline J: FOR THE APPLICANT

Subparagraphs 4.a. and 4.b.: For the Applicant

Paragraph 5, Guideline E: FOR THE APPLICANT

Subparagraphs 5.a. and 5.b.: For the 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.

WILFORD H. ROSS
Administrative Judge