



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



In the matter of:)	
)	
)	ISCR Case No. 09-03523
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Nichole Noel, Esq., Department Counsel
For Applicant: *Pro se*

March 9, 2011

Decision

LYNCH, Noreen A, Administrative Judge:

On October 30, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) listing security concerns arising under Guideline H (Drug Involvement), Guideline F (Financial Considerations), Guideline G (Alcohol Consumption), and Guideline E (Personal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested an administrative determination. Department Counsel submitted a File of Relevant Material (FORM), dated January 19, 2011.¹ Applicant received the FORM on February 2, 2011, and submitted a response to the FORM which is admitted into the record without objection

¹The Government submitted eight items in support of its case.

as AE A. On February 28, 2011, the Director, DOHA, forwarded the case for assignment to an administrative judge. I received the case assignment on March 2, 2011. Based on a review of the case file, submissions, and exhibits, I find Applicant failed to meet his burden regarding the security concerns raised. Security clearance is denied.

Findings of Fact

In his answer to the SOR, Applicant admitted the factual allegations under Guideline F (Financial Considerations), Guideline G (Alcohol Consumption), Guideline H (Drug Involvement), and Guideline E (Personal Conduct).

Applicant is a 39-year-old employee of a defense contractor. He graduated from high school and received a degree from a technical college in December 2007. Applicant is married and has three children. He has worked for his current employer since February 2008. (Item 4)

Applicant states that he is proud of his current employment and believes that it is a great personal accomplishment. He wants to continue his work, and does not intend to do anything to jeopardize his position.

Applicant submitted letters of recommendation from his manager and his mentor. He is described as dependable and trustworthy. Applicant has gained the respect of his peers. (AE A) Applicant received two awards recognizing his achievements. He is a valued member of the team. He completed training courses in work ethics, information security, and drugs in the workplace.

Drug Involvement

From 1990 until 2005, Applicant purchased and used cocaine. (Item 1 and 3) At first, Applicant used cocaine approximately once per year (1991 until 2000). He admitted that he used cocaine on a weekly basis with varying frequency from January 2000 until 2005. He stated that the only way he used cocaine was by snorting it. He was never arrested, but his illegal drug use impacted his life. His use of cocaine, and the money he spent on it, had an adverse effect on his marriage and his ability to satisfy his debts. As a result, he fell behind in his mortgage payments. In 2004, his mortgage lender foreclosed on his home. He also incurred delinquent debts from 2005 until 2009.

Applicant states that his drug use is in the past. He regrets his past decisions and understands the consequences of his behavior. He states that he has not used illegal drugs since 2005. He does not intend to use drugs again. Applicant acknowledges that he has not obtained any counseling. He states that he has stopped using drugs without the help of a drug program. (Response to FORM)

Alcohol Consumption

Although never arrested for illegal drug use, Applicant was arrested twice for alcohol incidents. In 2000, he was charged with public intoxication. (Item 6) In September 2008, he was charged with Driving under the Influence. He admitted consuming four-12 ounce margaritas and three beers before going to a party. He consumed four more beers and four shots of whiskey at the party. He drove home after the party and was involved in an accident. (Items 2, 5, and 6)

Applicant continues to drink and to the point of intoxication. (Item 5) In response to his the DOHA 2009 interrogatories, he admits drinking a 12 pack of beer on the weekends. He also acknowledges "winding down" the week with a few margaritas. He has not attended any alcohol counseling programs. He believes he has decreased his alcohol use from daily to the weekend.

As to alcohol consumption, Applicant now claims that "he has gained complete control of the situation with alcohol." He is on probation for the 2008 DWI, but did not disclose details about the length of the probation. At the time of the FORM, the case was pending, and there was no other information concerning the final adjudication of the 2008 incident. Applicant states " he cannot get this (probation) behind him fast enough," and he noted that he is current on his payments to the probation office. (Response to FORM) Applicant completed a DWI education program in December 2010. (AE A)

Financial

The SOR lists seven delinquent accounts totaling \$14,458. Applicant admitted the debts and the credit reports confirm them. (Items 2, 7 and 8) He accumulated the debts after his home was foreclosed in 2005.

Applicant was unemployed from November 2005 until December 2006 because he was taking college courses. He has been steadily employed since January 2007. However, he admits that he mismanaged his money and did not care about the delinquent debts due to the cocaine use.

When Applicant completed his security clearance application in November 2008, he did not disclose any delinquent debts in response to questions 28(a) and 28(b). He admitted that he deliberately falsified his application. However, he stated that he was not aware of some of the medical accounts. (Item 5) In his latest response, he stated that he was overwhelmed with the security clearance application and had not looked at a credit report. He also noted that he was very worried about "it" and what it would show and did not want to deal with it. (Response to FORM)

Applicant responded to DOHA interrogatories in May 2009. Regarding his financial situation, he explained that he would consolidate his debts and take care of them. Applicant's 2009 monthly net income was \$2,600 including his wife's income.

After expenses, his net remainder was approximately \$37. At the time, he did not list any payments for debts.

In his Response to the FORM, Applicant stated that he is slowly starting to pay off his debts. He provided a form from a national credit care program (undated) to provide proof for his assertion that he is currently addressing his delinquent debts. Applicant submitted a letter, dated January 21, 2011, that noted his credit card was charged \$50 for payment on a Capital One account. There is no other information concerning a structured payment plan. Finally, he submitted a form from Transunion listing several accounts that were disputed.

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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." 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.

The United States Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." ² The burden of proof is something less than a preponderance of evidence. ³ The ultimate burden of persuasion is on the applicant. ⁴

A person seeking access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”⁵ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁷ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

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.

⁵ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying:

- (a) any drug abuse (see above definition);
- (b) testing positive for illegal drug use;
- (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;
- (d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence;
- (e) evaluation of drug abuse or drug dependence by a licensed clinical social worker who, is a staff member of a recognized drug treatment program;
- (f) failure to successfully complete a drug treatment program prescribed by a duly qualified medical professional;
- (g) any illegal drug use after being granted a security clearance; and,
- (h) expressed intent to continue illegal drug use, or failure to clearly and convincingly commit to discontinue drug use.

Applicant admitted his use of illegal drugs (cocaine) from 1991 until 2005. He reported that he purchased cocaine. His use varied in frequency, but at one point he was using it every week. AG¶ 25(a) and 25(c)apply.

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 last use of cocaine was in 2005. He states that he has not used any illegal drugs in six years. However, he did not obtain a current evaluation from a licensed professional which verifies his non-drug use. Given, his 14 year history, I have doubts as to his rehabilitation in this case.

Guideline G, Alcohol Consumption

AG ¶ 21 expresses the security concern pertaining to alcohol consumption, "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."

AG ¶ 22 describes conditions that could raise a security concern and may be disqualifying:

(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;

(b) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

(c) 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;

(d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence;

(e) evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program;

(f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program; and,

(g) failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

Applicant has two alcohol incidents from 2000 until 2008. He was arrested in 2008 for DWI. Applicant states that he is on probation and provided no details about the adjudication. He continues to drink and at times to the point of intoxication. He claims that he has it under control. He has not participated in any alcohol treatment programs. He did complete a Driver Alcohol Education class in December 2010. AG ¶ 22(a) and (c) apply.

AG ¶ 23 provides conditions that could mitigate security concerns:

(a) 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;

(b) 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);

(c) the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress; and,

(d) the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

After considering the mitigating conditions, I do not find that given the information in this record, that he has mitigated the alcohol concern.

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or an 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." It also states that "an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant admitted that he had delinquent debts. He admitted that due to his drug use, he neglected his financial affairs. Applicant currently has delinquent debts in the amount of \$14,000. Consequently, Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

Applicant was unemployed while he attended school from November 2005 until December 2006. This may have exacerbated Applicant's ability to meet his obligations, but he provided no information about his efforts to otherwise meet those obligations during that period. Since January 2007, he has been steadily employed. He also acknowledged that his focus on drugs prevented him from paying attention to his financial affairs. Applicant did not address any delinquent debts even after his October 2009 SOR until January 2011. Consequently, Financial Considerations Mitigating Condition (FCMC) AG ¶ 20(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) does not apply.

Financial Considerations Mitigating Condition (FC MC) AG ¶ 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 under the circumstances) does not apply. As noted, Applicant had a thirteen month period of unemployment. However, there is no evidence that he acted reasonably under the circumstances. He allowed the delinquent debts to remain unpaid. There is no record of any attempts to resolve his debt until after he received the SOR. He receives partial credit under this mitigating condition.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. Applicant has not provided evidence of any consistent payment plans. He asserts that he is now working with a national credit care company to help his credit. He submitted one letter from January 2011 that he has charged one \$50 payment for one account. His failure to provide information about financial counseling obviates the applicability of FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control).

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. Under AG ¶ 16(a), a disqualifying conditions exists when there is "deliberate omission, concealment, or falsification of relevant facts from any personnel questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security eligibility or trustworthiness, or award fiduciary responsibilities." Under AG ¶ 16(b) a disqualifying condition exists when "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 admission is sufficient to raise the disqualifying conditions. He deliberately mislead the government by not including any information about his delinquent debts. His behavior and personal conduct are disqualifying as they raise questions about his judgment, reliability, truthfulness, and willingness to comply with the law.

After considering the mitigating conditions outlined in AG ¶ 17, I conclude that none of them apply. Applicant did not make prompt or good-faith efforts to correct his falsification or concealment. He provided no information that indicates he was ill-advised. The intentional omissions occurred in 2008, and are too recent and serious to be mitigated by the passage of time. I have serious doubts about his good judgment and reliability. He has not provided information in this record to show that he has met his burden of proof to mitigate the personal conduct concern.

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 an 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.

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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 39 years old. He has letters of recommendation from his employer. He has done a good job in his position since 2008. He is married and has two children. He is proud of his work accomplishments. He intends to resolve his debts. He claims he has not used any drugs since 2005. His last alcohol incident was in 2008.

Applicant has been on notice since the SOR in 2009, yet he is just starting to address his delinquent debts. He has a history of behavior that involves dishonesty. He believes that he has insight into his behavior, but he has not obtained any drug or alcohol treatment. Applicant currently has unresolved financial difficulties. His financial difficulties stem from a time when he admittedly used cocaine and neglected his affairs. Applicant shows a lack of candor and questionable judgment. Although Applicant's last alcohol offense was in 2008, I have doubts about his reliability.

Applicant failed to submit sufficient information or evidence to mitigate the security concerns raised in his case. He failed to offer evidence of financial counseling. He failed to provide documentation regarding a consistent payment plan for all his debts. He admitted that he intentionally falsified his 2008 security clearance application. He may be on the right path concerning alcohol and drug use, but he has not provided documentation to show alcohol and drugs are no longer a problem. I have doubts given the record. Accordingly, Applicant has not mitigated the 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:

Paragraph 1, Guideline G:	AGAINST APPLICANT
Subparagraphs 1.a- 1b:	Against Applicant
Paragraph 2., Guideline H:	AGAINST APPLICANT
Subparagraphs 2.a through 2.c:	Against Applicant
Paragraph 3, Guideline F:	AGAINST APPLICANT
Subparagraphs 3.a through 3.g:	Against Applicant
Paragraph 4, Guideline E:	AGAINST APPLICANT
Subparagraph 4.a:	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 a security clearance. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge