



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



In the matter of:)
)
) ISCR Case No. 10-00182
)
Applicant for Security Clearance)

Appearances

For Government: Robert Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

05/13/2014

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government’s security concerns under Guideline F, financial considerations, but failed to mitigate the security concerns under Guideline E, personal conduct. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On January 16, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F, financial considerations, 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) effective within the DOD on September 1, 2006.

Appellant answered the SOR on February 19, 2014, and requested a hearing before an administrative judge. The case was assigned to me on March 10, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March

25, 2014, and the case was scheduled for April 14, 2014. Applicant was unable to attend the hearing and an amended notice of hearing was issued on April 14, 2014. The hearing was convened as scheduled on April 28, 2014. The Government offered exhibits (GE) 1 through 6, and they were admitted into evidence without objection. Applicant testified and offered Applicant's Exhibits (AE) A through E. The record was held open until May 8, 2014, to provide Applicant the opportunity to present additional documents, which he did. The exhibits were marked as AE F through H and admitted into evidence without objection.¹ DOHA received the hearing transcript (Tr.) on May 6, 2014.

Findings of Fact

Applicant denied the allegations in the SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 42 years old. He graduated from high school in 1990. He served in the Navy from 1991 to 2000 and was honorably discharged. He has never married. He has two children, ages 12 and 10, from a previous relationship. He pays child support to their mother.²

Applicant was in a car accident in November 2012. He was seriously injured and incurred numerous hospital and doctors' bills. He was a passenger in the car. The driver's insurance company paid part of the medical bills. He was living with his aunt at the time and her insurance policy also covered some of his medical bills. He was eventually offered a settlement amount of \$24,273 from one insurance company. This was to pay the remaining medical and other expenses. The settlement required Applicant to waive his right to sue for further damages. Applicant accepted the settlement. Applicant used the settlement money and paid the debts in SOR ¶ 1.j (\$9,864) and ¶ 1.k (\$125), which were for hospital expenses.³ The remainder of the money Applicant put in the bank and used it to pay the remaining medical debts.⁴

The debts in SOR ¶ 1.a through ¶ 1.i and ¶ 1.l are medical expenses from the individual doctors that treated Applicant. The individual doctors are part of a physicians' group (group). Instead of billing the insurance company for their services, the group billed Applicant. At the time, he was unaware that the group did not bill the insurance company. When he learned of this error it was past the claims filing deadline, and the group was unable to bill the insurance company directly. Applicant went to the group's office and paid \$500 toward the aggregate that is owed. The group is aware that due to its error it cannot be compensated by the insurance company and was willing to

¹ Hearing Exhibit I is Department Counsel's memoranda.

² Tr. 18-21.

³ AE B.

⁴ Tr. 21-28, 40-47, 50-52, 66-75.

negotiate a settlement with Applicant on the total amount. Applicant settled the debts. He credibly testified he has no other delinquent debts.⁵

Applicant admitted since 1994 he has had his driver's license suspended so many times he cannot remember how many. In March 2005, he was convicted of driving with a suspended/revoked license. In September 2007, DOHA denied him a security clearance in part due to his conviction. He admitted that after his 2005 conviction he continued to drive on a suspended license. At some point his license was reinstated, and in July 2010, Applicant's driver's license was revoked for five years for habitual traffic offender. He was placed on supervised probation.⁶

A review of Applicant's driver's license record reflects numerous traffic offenses from 1998 to 2010. The offenses include reckless driving, careless driving, speeding, open container-alcohol, failure to pay traffic fine, failure to have continuous automobile insurance, failure to appear for traffic summons, and repeatedly driving on a license that was canceled, suspended or revoked.⁷

Applicant realized that not having a driver's license was costing him a lot of money and inconvenience. He had to pay people to drive him to work and other places. He began going through the process of obtaining a hardship license. He completed the terms of his probation a year early and has paid all fines owed. He completed an advanced driver improvement course. He stated he has had an administrative hearing and completed the court's requirements to have his license reinstated in August 2014. When asked if he has driven on a suspended license since his last suspension in July 2010, he stated "probably two or three times."⁸ Applicant admitted he has made a lot of mistakes, especially concerning his driving. He took responsibility for his actions.⁹

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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 the adjudicative process. The administrative judge's overarching

⁵ Tr. 47-59, 66-77; AE C, F, G, H.

⁶ Tr. 34-38, 84-85; GE 2.

⁷ Tr. 35; GE 2.

⁸ GE 2.

⁹ Tr. 37-39, 60-65, 83.

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.

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 not drawn 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, 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 and has the ultimate burden of persuasion to obtain 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. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern 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. I have considered all of the disqualifying conditions under AG ¶ 19, and the following two are potentially applicable:

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

Applicant had approximately \$13,674 of delinquent medical debts related to injuries he suffered in an accident in November 2012. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's inability to meet his financial obligations initially occurred due to an accident that was not his fault. These circumstances are unlikely to recur and do not cast doubt on his current reliability, trustworthiness or good judgment. However, because Applicant is still resolving the debts to the physicians' group, they are still current. Therefore, AG ¶ 20(a) only partially applies.

Applicant's delinquent debts are all for medical services incurred when he was injured. These financial problems were beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. He reached a settlement with one of the insurance companies and paid the debts in SOR ¶ 1.j

(\$9,864) and ¶ 1.k (\$125). The remaining debts were to be paid by the insurance company, but the group failed to file the claim timely. Applicant made a \$500 payment toward the aggregate balance of the remaining debts owed in SOR ¶¶ 1.a through 1.i and 1.l. He and the group are negotiating a settlement for the remaining balance. He has the resources to pay the settlement when an agreement is reached. Applicant has acted responsibly. AG ¶ 20(b) applies.

Applicant has no other delinquent debts. There is no evidence he has received financial counseling, but there are clear indications his financial problems are under control. He has initiated a good-faith effort to repay his creditors and resolve the remaining debts. AG ¶¶ 20(c) and 20(d) apply.

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. 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 ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following potentially apply:

(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. This includes but is not limited to consideration of . . . (3) a pattern of dishonesty or rule violations; and

(e) personal conduct, concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing.

Since 1994 Applicant has had his driver's license suspended numerous times for a myriad of offenses. In 2005, he was convicted of driving with a suspended/revoked license. After being denied a security clearance in 2007, due in part to his 2005 conviction, he continued to drive on a suspended license. In 2010, his license was revoked for five years for being a habitual offender. AG ¶¶ 16(d) and 16(e) apply.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (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
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant has a long history of violating traffic laws. He repeatedly had his license suspended for various violations and he continued to drive. After his 2005 criminal conviction for driving with a suspended/revoked license, he had a security clearance hearing. He was denied a clearance, in part, due to his conviction. After being denied a clearance, he again was charged with driving on a suspended license. In 2010, he was found to be a habitual traffic offender. He was placed on supervised probation and his license was revoked for five years. Applicant has completed the terms of his probation, paid associated fines, and has had an administrative hearing. He indicated his license will be reinstated in August 2014.

Applicant repeatedly violated traffic laws for more than 16 years. His conduct was egregious. He exercised a complete disregard for complying with the terms of his suspended/revoked license. He admitted he has driven a few times since his license was revoked as a habitual offender in 2010. His conduct was not minor or infrequent. He stated his actions have cost him a lot of money and inconvenience, which has motivated him to expedite the completion of the terms of his probation.

Based on his past record and that he has driven a few times since his 2010 license revocation, Applicant does not have a reliable track record that he will comply with the traffic laws once his license is reinstated. At this time, I am not convinced that he is completely committed to complying with all rules and regulations. Although he has acknowledged he has made mistakes and has taken some positive steps to reinstate his license, without a consistent record of compliance with traffic laws, I cannot find future misconduct is unlikely to recur. I find AG ¶ 17(a) does not apply. AG ¶¶ 17(b) and 17(c) partially apply, but there is insufficient evidence to overcome the security 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 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is 42 years old. He served in the Navy and was honorably discharged. Applicant was in a serious accident and incurred numerous medical debts. He has paid some of the medical debts and is resolving the remaining ones. Applicant repeatedly violated traffic laws and continued to drive with a suspended/revoked license over a long period of time. His license will not be reinstated until August 2014. He does not have a track record of complying with rules and regulations. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the financial considerations guideline, but failed to mitigate the security concerns under the personal conduct guideline.

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:	FOR APPLICANT
Subparagraphs 1.a-1.i:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT

Subparagraph: 2.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. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge