



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



In the matter of:)
)
) ISCR Case No. 10-00416
)
Applicant for Security Clearance)

Appearances

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

May 17, 2011

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated personal conduct, drug involvement, and criminal conduct security concerns, but he has not mitigated financial considerations concerns. Eligibility for access to classified information is denied.

Statement of the Case

On November 1, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F (financial considerations), E (personal conduct), H (drug involvement), and J (criminal conduct). The action was taken under Executive Order (EO) 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) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on November 30, 2010, and requested a hearing before an administrative judge. The case was assigned to me on February 7, 2011.

DOHA issued a notice of hearing on March 2, 2011, and the hearing was convened as scheduled on March 25, 2011. The Government offered exhibits (GE) 1 through 20, which were admitted without objection. Applicant testified but did not submit any documentary evidence. DOHA received the hearing transcript (Tr.) on April 4, 2011.

Findings of Fact

Applicant is a 38-year-old employee of a defense contractor. He has worked for his current employer since 2009. He is applying for a security clearance. He attended college for a period but did not earn a degree. He is married. He and his wife have three children, ages nine, four, and two. He also has a 17-year-old child from a previous relationship.¹

Applicant grew up in a tough area. He joined a gang when he was about nine years old, and he was an illegal drug user. He was involved in criminal activities in order to support his drug habit. He estimated that he used marijuana and Rohypnol three times a day and about a gram of methamphetamine a day. He admits he was a drug addict. He was diagnosed as a drug abuser and as drug dependent. The qualifications of the person making the diagnosis are unclear.² His criminal charges include:

May 1994 – Charged with assault, failure to appear, criminal damage/deface, and driving while suspended. The charges were dismissed in 2002.

May 1994 – Charged with assault and failure to comply with court order. The charges were dismissed in 2002.

December 1995 – Charged with criminal damage. Pleaded guilty in 1996 and fined.

September 1996 – Charged with burglary, criminal trespassing, and theft. Pleaded guilty to theft and placed on probation. Burglary and criminal trespassing charges were dismissed. Released from probation in 2002.

April 2000 – Charged with three counts of theft-credit card, fraudulent use of credit card, theft-obtaining by misrepresentation, fraudulent schemes/artifices, forgery, and carrying a concealed weapon without a permit. He was found guilty of the three counts of theft-credit card and fraudulent schemes/artifices, and he was placed on probation. The remaining charges were dismissed.

¹ Tr. at 27-28, 31-33; GE 1.

² Tr. at 16-18, 36, 42, 49-52; Applicant's response to SOR; GE 1, 2.

April 2005 – Charged with disorderly conduct-fighting. He was found guilty, fined, and ordered to attend anger management counseling.³

Applicant was also charged on several occasions in the 1990s with contempt of court, failure to appear, and probation violations in relation to some of the above charges. He spent time in jail for some of the offenses.⁴

Applicant also had a number of traffic offenses and citations as follows:

August 2002 – No legible driver's license in possession. Attended traffic school and dismissed.

August 2004 – Drive in one lane-unsafe lane change. Pleaded guilty and fined.

November 2006 – Lap and shoulder belts required and failure to produce evidence of financial responsibility. The failure to produce evidence of financial responsibility citation was dismissed when Applicant produced proof of insurance. Found guilty of the seatbelt violation and fined.

March 2007 – Use private property to avoid traffic control device. Found guilty and fined.

November 2007 – Expired registration. Pleaded guilty and fined.

April 2008 – No mandatory insurance and failure to show driver's license or identification. Both offenses dismissed when Applicant produced proof of insurance and driver's license.

September 2008 – No current registration and failure to produce evidence of financial responsibility. Pleaded guilty to both offenses.⁵

Applicant has not used illegal drugs since 2000. Except for his traffic citations and the relatively minor disorderly conduct charge from 2005, his involvement with law enforcement also ceased at the same time. He credits his turnaround to his wife. A number of his old associates are dead or in prison. Applicant was stabbed six times in 1999. He cited that as another reason for going straight. He admitted that in the past, he did not always have a driver's license, and he could not afford insurance. He stated his driver's license was reinstated in about 2002, and he has had insurance and appropriate registration for about the last three years.⁶

³ Tr. at 36-48, 52-54; Applicant's response to SOR; GE 1-8, 11, 17.

⁴ *Id.*

⁵ Tr. at 20-21; Applicant's response to SOR; GE 1. 2, 9, 10, 12-16.

⁶ Tr. at 18-23, 48-49, 53; GE 2, 17.

Applicant filed Chapter 7 bankruptcy in 2004. The bankruptcy petition listed under Schedule D – Creditors Holding Secured Claims, a \$13,000 loan on a 2000 model car. Under Schedule E – Creditors Holding Unsecured Priority Claims, the petition listed \$7,000 owed in child support arrearages. Under Schedule F – Creditors Holding Unsecured Nonpriority Claims, the petition listed 25 debts totaling \$16,433. Applicant’s dischargeable debts were discharged in 2004.⁷

Applicant stated that he filed bankruptcy because he was young and inexperienced with money. He had periods of unemployment before he started his current job. In 2006, his mother-in-law developed breast cancer and moved in with Applicant and his wife. His father was diagnosed with lung cancer in 2008. Applicant helped his father financially before he passed away from the cancer in 2009. Applicant was unable to pay all his bills on his salary, and a number of debts became delinquent. Applicant admitted that in addition to his expenses exceeding his income, “bad judgment and poor money management skills [came] into play also.”⁸

The SOR alleges 19 delinquent debts with balances totaling about \$14,900. The debts were accrued after Applicant’s previous debts were discharged in bankruptcy. Applicant admitted owing all the debts.

In about 2008, Applicant made several payments to a debt consolidation company in an attempt to resolve his debts. Since those payments, he has not made any payments toward any of the debts alleged in the SOR. He regularly pays his child support, and he has paid, or almost paid, the arrearages. He has received some financial counseling. His wife works. Applicant stated their finances are better, but they are still living “paycheck to paycheck.” He stated that he plans to pay the delinquent debts with a withdrawal from his wife’s 401(k) retirement account.⁹

Applicant submitted a questionnaire for national security positions (SF 86) in August 2009. He listed a number of delinquent debts under the pertinent financial questions. Under the question asking about felony charges, he listed his 2000 conviction for “[t]heft of a credit card,” his 1996 conviction for “[b]urglary,” and his 1996 conviction for “[c]riminal damage.” Under the question asking about firearms offenses, he did not list that he was charged, but not convicted, of carrying a concealed weapon without a permit. He did not list his 2005 disorderly conduct-fighting charge under the question asking about charges and convictions during the previous seven years. Applicant credibly denied intentionally falsifying the SF 86.¹⁰ After considering all the evidence, including Applicant’s testimony and all the derogatory information he listed under different questions, I find that Applicant did not intentionally falsify his SF 86.

⁷ Tr. at 24; Applicant’s response to SOR; GE 1, 2.

⁸ Tr. at 24-25, 35-36, 55-58; GE 1, 2.

⁹ Tr. at 23-30, 33-34, 56-64; GE 2.

¹⁰ Tr. at 54-56; GE 1.

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 to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching 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.

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 the applicant or proven by Department Counsel." The applicant 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 EO 10865 provides that adverse 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 J, Criminal Conduct

The security concern for criminal conduct is set out in AG ¶ 30:

Criminal activity creates doubt about an Applicant'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.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable:

- (a) a single serious crime or multiple lesser offenses;
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted; and
- (e) violation of parole or probation, or failure to complete a court-mandated rehabilitation program.

Applicant's multiple arrests, convictions, probation violations, and illegal drug involvement are sufficient to raise the above disqualifying conditions.

Conditions that could mitigate criminal conduct security concerns are provided under AG ¶ 32. The following are potentially applicable:

- (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; and
- (d) 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.

Most of Applicant's criminal conduct was related to his gang activity and his illegal drug use. Applicant quit the gang, and he stopped using illegal drugs in 2000. He credits his wife as the impetus for his change. He has a 2005 disorderly conduct conviction, but no serious criminal charges since he stopped using drugs. He has established a stable employment record. His remorse was candid and sincere. I find there is evidence of successful rehabilitation, and Applicant's criminal behavior is unlikely to recur. AG ¶¶ 32(a) and 32(d) are applicable.

Guideline H, Drug Involvement

The security concern 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 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 25. Three are potentially applicable in this case:

- (a) any drug abuse;¹¹
- (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and
- (d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence.

Applicant's drug possession and use are sufficient to raise AG ¶¶ 25(a) and 25(c) as disqualifying conditions. He readily admits to being addicted to illegal drugs. He was diagnosed as a drug abuser and drug dependent. The qualifications of the person making the diagnosis are unclear, but the Appeal Board has stated that an administrative judge should take an expansive view of what constitutes a duly qualified medical professional.¹² AG ¶ 25(d) is also applicable.

Two Drug Involvement Mitigating Conditions under AG ¶ 26 are potentially applicable:

- (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; and
- (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;

¹¹ Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

¹² ISCR Case No. 07-00558 at 5 (App. Bd. Apr. 7, 2008).

- (4) a signed statement of intent with automatic revocation of clearance for any violation.

Applicant stopped using illegal drugs in 2000. He clearly, unequivocally, and credibly committed to remaining drug free. I find there has been an appropriate period of abstinence, and that illegal drug use is unlikely to recur. AG ¶¶ 26(a) and 26(b) are applicable.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15:

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 disqualifying conditions are potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, 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;

(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;

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

(g) association with persons involved in criminal activity.

Applicant's gang membership, multiple arrests, convictions, probation violations, illegal drug involvement, traffic citations, and failure to honor his financial obligations raise AG ¶¶ 16(c), 16(d), 16(e), and 16(g) as disqualifying conditions.

Applicant provided inaccurate information on his SF 86, but it was not intentional. AG ¶ 16(a) is not applicable. SOR ¶¶ 2.t and 2.u are concluded for Applicant.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(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;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Applicant has not used illegal drugs since 2000, and his last serious criminal activity was the same year. He quit the gang long ago. His last traffic offense was in 2008. He has a driver's license and appropriate insurance and registration for his car. AG ¶¶ 17(c), 17(d), 17(e), and 17(g) are applicable to the concerns raised by Applicant's gang membership, criminal activity, illegal drug involvement, and traffic citations. He still has delinquent debts, but he has been open and honest about his finances, which reduces his vulnerability to exploitation, manipulation, and duress. AG ¶ 17(e) is applicable to the personal conduct concerns raised by Applicant's failure to honor his financial obligations.

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 under AG ¶ 19. Four are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations;
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional breaches of trust; and
- (f) financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern.

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay his financial obligations. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as disqualifying conditions. He committed criminal acts to support his drug habit. AG ¶¶ 19(d) and 19(f) are also applicable.

Four Financial Considerations 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 has not used illegal drugs since 2000. AG ¶ 20(a) is applicable to the financial allegations related to Applicant's drug use and criminal activity, under the same rationale discussed under those guidelines.

Applicant attributed his financial problems leading to his bankruptcy to being young and inexperienced with money. He had periods of unemployment after the bankruptcy. His mother-in-law and father both developed cancer, and his father passed away from the disease. Those events qualify as conditions that were outside his control. AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. The unexpected events were not the sole cause of Applicant's financial problems. He admitted that he also exercised bad judgment and poor money management. Applicant has been employed since 2009, but he has done nothing of significance to address his delinquent debts. There is insufficient evidence for a determination that Applicant acted responsibly and made a good-faith effort to repay or otherwise resolve his delinquent debts. He received some financial counseling, but his finances are not under control. His financial issues are recent and ongoing. I am unable to determine that they are unlikely to recur. They continue to cast doubt on Applicant's current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) and 20(d) are not applicable to Applicant's delinquent debts. AG ¶¶ 20(b) and 20(c) are partially applicable. In sum, I find that financial concerns remain despite the presence of some mitigation.

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, E, H, and J in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant, like many other people in his neighborhood, joined a gang when he was only a child. He was immersed in drugs and criminal activity until he was well into his 20s. To his credit, he saw his future as a jail cell or a coffin if he continued that life. With the help and support of his wife, he changed his life and put drugs and criminal activity behind him. His financial problems remain a security concern. If he can continue to stay out of trouble and address his delinquent debts, he will be a good candidate for a security clearance at his next opportunity.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has mitigated personal conduct, drug involvement, and criminal conduct security concerns, but he has not mitigated financial considerations concerns.

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 APPLICANT
Subparagraphs 1.a-1.s:	Against Applicant
Subparagraph 1.t:	For Applicant
Subparagraph 1.u:	Against Applicant
Subparagraph 1.v:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a-2.u:	For Applicant
Paragraph 3, Guideline H:	FOR APPLICANT
Subparagraphs 3.a-3.c:	For Applicant
Paragraph 4, Guideline J:	FOR APPLICANT
Subparagraph 4.a:	For 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.

Edward W. Loughran
Administrative Judge