



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



In the matter of:)
)
) ISCR Case No. 10-01344
)
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: *Pro se*

January 31, 2011

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline F, Financial Considerations, Guideline H, Drug Involvement, and Guideline G, Alcohol Consumption. Applicant’s eligibility for a security clearance is denied.

On July 19, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F, H, and G. 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 Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on August 13, 2010, and elected to have his case decided on the written record. Department Counsel submitted the Government’s File of Relevant Material (FORM) on September 28, 2010. The FORM was mailed to Applicant

and it was received on November 2, 2010. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the FORM and did not submit additional material. The case was assigned to me on December 23, 2010.

Findings of Fact

Applicant admitted all of the SOR allegations, except he did not provide any answer to ¶ 1.p. After a thorough and careful review of the pleadings, exhibits, and statements submitted, I make the following findings of fact.

Applicant is 29 years old. He is not married and has no children. He earned a college degree in 2003, and has worked for a federal contractor since 2006.

Applicant admitted he owes the 15 delinquent debts alleged in SOR ¶¶ 1.a through 1.o, totaling approximately \$49,889. He accumulated the debts between the years 2003 and 2008. He is attempting to develop a budget and live within his means. He hopes to pay his delinquent debts by paying the smallest first. He recently moved, which impacted his ability to start his payments. He provided an outline of a plan indicating when he would start paying each debt and indicated they would all be resolved in the next four years. He did not provide documents to support he has begun making payments on any of the debts. There is no indication Applicant has received financial counseling.

Applicant attributed his delinquent income tax debt to the failure of his employer, in 2005, to withhold taxes from his pay. In his statement to an Office of Personnel Management (OPM) investigator in 2009, he stated that he learned in 2007 that he owed money to the IRS and took a loan from his father to repay the debt. In 2008, he was contacted by the IRS and advised he owed back taxes for tax years 2005 and 2007. He stated he paid the debt in full in 2008. In 2009, he was again contacted by the IRS because he owed 2008 income taxes. He stated he entered into a payment plan with the IRS to pay \$220 a month. His first payment was due January 2010, and the term of the agreement was for 60 months. Applicant admitted in his OPM interview that he was aware when he completed his 2005, 2007, and 2008 federal income tax returns that he owed money to the IRS. He did not have the funds to pay them at the time. He provided documentation that he made a \$220 payment in March 2010 and April 2010. No additional documentation was provided.¹

Applicant was suspended in 2007, by his employer, for one week for misusing the company's credit card. Applicant did not provide a response to this allegation in his answer. In his OPM statement he admitted to improperly using his employer's credit card, which was a violation of the employer's policy. The card was to be used only for

¹ Answer to SOR; GE 8 at 122-123.

business expenses, and he used the credit card for personal purchases. His misuse was discovered when he was delinquent in paying the credit card bill.²

Applicant attributed his financial issues to overspending and then not paying his bills timely. He admitted the debts were not beyond his control. He stated he is able to pay his monthly expenses.

Applicant used marijuana with varying frequency from about 1997 to September 2009. He purchased marijuana on various occasions. He sold marijuana on various occasions. He used cocaine on approximately two occasions in about 2000 to 2001. He used two prescription drugs, Adderall and Ritalin, without a prescription approximately weekly between 2000 and 2003.

Applicant was arrested on about November 30, 2007, and was charged with marijuana possession, less than 40 grams, use or deliver drug paraphernalia, and driving under the influence (DUI). In accordance with a plea agreement, Applicant was found guilty of DUI, and the other charges were dropped. He was sentenced to 365 days in jail, with 364 days suspended, fined \$1,200, placed on probation for five years, and ordered to complete an alcohol assessment, and attend a victim's impact panel. In his OPM statement, he indicated that he attended an alcohol and drug assessment, but was unable to recall the name or address of it. He stated he was assessed with "no problems" related to alcohol or drugs.³

In his OPM interview of October 29, 2009, Applicant stated he had not consumed marijuana since June 2009. However, he planned on continuing casual consumption of marijuana in the future. He did not believe his use of illegal drugs contributed to any problems. He indicated that he reduced his illegal drug use in the past six years and anticipated limiting it in the future. He has never received any treatment for drug-related issues.⁴

Applicant stated in his answer that he has not used any illegal drugs or misused any prescription drugs since September 2009. His statement is inconsistent with the previous statement he made to the OPM investigator. He indicated in his answer that he never purchased large quantities of marijuana with the intent to sell for profit. He "merely 'sold' extremely small quantities to friends at cost."⁵ Applicant used marijuana while he was on probation. He remains on probation until 2012. His answer to the SOR did not address his use of drugs in the future.

² GE 8 at page 127.

³ GE 8 at 125-127.

⁴ *Id.*

⁵ Answer to SOR.

Applicant was arrested in about August 2001, and charged with operating under the influence. The charge was reduced to operating while intoxicated. He was required to pay a fine.

Applicant continues to consume alcohol, at times to excess and to the point of intoxication, even though he continues to be on probation for an alcohol-related offense. He intends to continue consuming alcohol.

Applicant admitted his criminal arrests bring into question his judgment. He believes they were isolated situations. He does not believe he has an alcohol problem. He indicated the last time he drank alcohol and drove was in November 2007, when he was arrested. He attended the victim's impact panel and it had a profound impact on him.

Policies

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 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 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 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. Decisions include, by necessity, consideration of the possible risk 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.

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 conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19 and especially considered:

- (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 evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust; and
- (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow high debt-to-income ratio, and/or other financial analysis.

Applicant has 15 delinquent debts totaling more than \$49,889 that are not paid. He began accumulating delinquent debt in 2003. He admitted his delinquent debts were due to his overspending and then being unable to make the payments. He admitted he misused his employer issued credit card for personal use. I find there is sufficient evidence to raise these disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under 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;
- (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 admitted he owes all 15 delinquent debts alleged. He provided a proposed plan on what he intends to do, but did not provide documented proof that he has started the plan. He did provide proof that he has made two payments toward his debt to the IRS. He admitted the debts were not beyond his control. He has made limited efforts to pay his delinquent debts. His lack of action to resolve the delinquent debts casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) and 20(b) do not apply. Applicant offered no evidence that he received financial counseling or that there are clear indications he is acting in a responsible way to resolve his debts. He has not made sufficient good-faith payments to his creditors or taken other action to resolve his delinquent debts. I find AG ¶¶ 20(c) and 20(d) do not apply.

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

I have considered the disqualifying conditions under Drug Involvement AG ¶ 25 and especially considered the following:

- (a) any drug abuse;
- (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and

Applicant has used marijuana with varying frequency from about 1997 to at least September 2009. He used it while on probation. He purchased marijuana for his personal use. He sold small quantities of marijuana to friends and not for profit. I find these disqualifying conditions apply.

I have considered all of the mitigating conditions under Drug Involvement AG ¶ 26 and especially considered the following:

- (a) the behavior happened so long ago, was so infrequent or happened under circumstances that it is unlikely to recur or does not cast doubt on the individual's 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; (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 has been using illegal drugs since 1997. His most recent use of marijuana was in September 2009. His behavior is recent. His probation does not seem to be a deterrent to him to stop using illegal drugs. I find his behavior is recent and there

is minimal evidence to support it is unlikely to recur. His drug abuse casts doubt on his current reliability, trustworthiness, and good judgment. Therefore, AG ¶ 26(a) does not apply. Applicant has not demonstrated an intention not to abuse illegal drugs in the future. In his 2009 statement to OPM, he indicated he would likely use marijuana in the future. In his answer to the SOR, he does not address his future use. There is no evidence that Applicant's abuse of prescription drugs was after a severe or prolonged illness. There is no evidence Applicant satisfactorily completed a prescribed drug treatment program. I find none of the remaining mitigating conditions apply.

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.

I have considered all of the disqualifying conditions under AG ¶ 22 including:

(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.

Applicant had an alcohol-related incident in 2001, and again in 2007, when he was convicted of DUI. He remains on probation for the 2007 DUI conviction until 2012. The above disqualifying condition applies.

I have also considered all of the mitigating conditions under AG ¶ 23 and especially considered the following:

(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 not 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.

Applicant has two alcohol-related convictions. His last conviction was in 2007. He remains on probation for this conviction until 2012. Applicant did not provide sufficient information or evidence regarding his current alcohol consumption pattern or any substantiation that he was diagnosed as having "no problem." Applicant continues to consume alcohol, so without additional information, I am unable to determine if he has overcome his alcohol-related issues, and established a pattern of responsible use. Therefore, I find none of the above mitigating conditions apply.

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 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, H and G, 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 29 years old. He has a significant history of illegal drug use. He indicated in his statement to OPM that he had reduced his illegal drug use, but he did not provide a clear and convincing statement that he intended to stop using illegal drugs in the future. Applicant has approximately \$49,889 in delinquent debts that remains unpaid. He admitted the debts were due to over spending and then not paying his bills. He misused

his employer's credit card. He pled guilty to DUI in 2007 and remains on probation until 2012. Applicant's use of marijuana after he was placed on probation from his DUI is troubling. Applicant continues to consume alcohol after his DUI conviction. He provided insufficient information to conclude that he is using alcohol responsibly. I find that SOR ¶ 2.a includes the conduct under ¶ 2.g, and therefore find for Applicant under SOR ¶ 2.g. Overall, the record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to meet his burden of persuasion and mitigate the security concerns arising under the guidelines for Financial Considerations, Drug Involvement, and Alcohol Consumption.

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.p:	Against Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraphs 2.a-2.g:	Against Applicant
Paragraph 3, Guideline G:	AGAINST APPLICANT
Subparagraphs 3.a-3.c.	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge