



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



In the matter of:)
)
) ISCR Case No. 10-04427
)
Applicant for Security Clearance)

Appearances

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

06/22/2012

Decision

CURRY, Marc E., Administrative Judge:

Applicant mitigated the personal conduct security concerns, but failed to mitigate the financial considerations security concerns. Clearance is denied.

Statement of the Case

On December 29, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline E, Personal Conduct, and Guideline F, Financial Considerations. 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) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on February 15, 2012, admitting all of the allegations and requesting a hearing. A notice of hearing was issued on April 20, 2012, scheduling the case for May 8, 2012. I held the hearing as scheduled, considering

Applicant's testimony, and receiving eight Government exhibits, marked as Government Exhibits (GE) 1 through 8, and eight Applicant exhibits (AE) marked as AE A through H. DOHA received the transcript (Tr.) on May 16, 2012.

Findings of Fact

Applicant is a 28-year-old single man. He is a high school graduate and has earned some college credits. Since 2009, he has worked for a defense contractor in shipping and receiving. (Tr. 19)

While in his late teens and early twenties, Applicant smoked marijuana approximately once a week, in social situations with friends. Also, he has used hallucinogenic mushrooms twice and experimented with cocaine once. His use of these other illegal drugs occurred in 2002. (GE 2 at 3-4)

In November 14, 2004, Applicant was arrested and charged with possession of marijuana. He pled guilty and was fined \$2,000 and placed on probation for one year. As part of the probation, Applicant was required to undergo random urinalyses approximately twice per month. He successfully completed probation. (Tr. 25)

Approximately three months after completing probation, Applicant was again arrested and charged with possession of marijuana. He was again fined and placed on probation for a year. After failing two random urinalyses, testing positive for marijuana, Applicant was referred to a drug treatment center. (Tr. 20) He attended drug treatment from March 2006 through May 2006. (GE 2 at 17) The treatment consisted of biweekly counseling.

Applicant successfully completed the counseling and has neither used marijuana nor any other illegal drugs since March 2006. Applicant's marijuana use caused tension with his family and friends who disapproved of it. (GE 2 at 17) Currently, Applicant lives with his girlfriend and her daughter. He no longer associates with people who abuse marijuana, and he has no intention of resuming his marijuana use. (GE 2 at 7)

On February 26, 2010, an investigator from the Office of Personnel Management (OPM) interviewed Applicant. When asked about illegal drug use, Applicant admitted his previous marijuana use, but intentionally failed to disclose his use of cocaine and hallucinogenic mushrooms. In response to an interrogatory regarding his falsification, Applicant responded, as follows:

I do want to say again that I sincerely regret if I have misled or been untruthful in any way throughout this process. I have made mistakes that I am not proud of when I was younger and I have learned from those mistakes and took the lessons I learned to heart so I never have them happen again. (GE 2 at 23)

Applicant comprehensively addressed his past marijuana usage on his security clearance application disclosing the frequency, the related arrests, and the name and address of the center where he received counseling.

As of February 2011, Applicant owed creditors approximately \$29,000 in delinquent debt. (GE 6) Approximately one-third of this debt constitutes medical bills (subparagraphs 2.a-2.r). (Tr. 23) Until 2009, Applicant did not have any health insurance, and could not afford to pay for his medical expenses out-of-pocket.

In March 2011, Applicant retained a credit counseling company. The company wrote letters to each of the credit reporting agencies disputing the debts as legally non-collectible because of the expiration of the state's statute of limitations. (Tr. 24, 35) In this manner, the debts listed in subparagraphs 2.g through 2.r have been removed from Applicant's credit report. (Tr. 24) He acknowledged on cross-examination that getting the delinquencies removed from his credit report is not synonymous with resolving them. (Tr. 27) Applicant is considering a consolidation loan to satisfy the remaining SOR debts, but he is reluctant to do so because of the job insecurity triggered by the security clearance investigation. (Tr. 25)

Applicant has satisfied an unlisted delinquency owed to an apartment complex, totaling \$1,254. (AE E) Also, his student loans, which were in default but not listed in the SOR, are now current. (Tr. 24)

Currently, Applicant earns approximately \$27,000 per year. He has \$250 of monthly discretionary income. (Tr. 35)

Policies

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 together with the factors listed in the adjudicative process. 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."

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 for obtaining a favorable security decision.

Analysis

Guideline E, Personal Conduct

Under this guideline, “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 ¶ 15) Applicant’s drug involvement triggers the application AG ¶ 16(e), “personal conduct, or concealment of information about one’s conduct, that creates a vulnerability to exploitation, manipulations, or duress, such as . . . engaging in activities which, if known, may affect the person’s personal, professional, or community standing.” Applicant’s intentional omission during an interview with an OPM investigator of his experimentation with cocaine and hallucinogenic mushrooms triggers the application of AG ¶ 16(b), “deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.”

Applicant was in his early twenties when his drug arrests occurred. Although he did not successfully complete counseling after his first arrest, he successfully completed counseling after his second arrest. He has not used marijuana or any other illegal drugs in approximately six years, and has settled down, living with his girlfriend and her four-year-old daughter. AG ¶ 17(e), “the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress,” applies.

The following mitigating conditions are potentially applicable to Applicant’s failure to disclose his cocaine use and his use of hallucinogenic mushrooms to the OPM investigator;

AG ¶ 17(a) the individual made prompt, good-faith efforts to correct the omission, concealment

AG ¶ 17(c) the offense was 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.

Applicant did not disclose the cocaine and hallucinogenic drug usage until he received interrogatories from DOHA that, among other things, requested an explanation for the omission. AG ¶ 17(a) does not apply.

Although Applicant did not disclose his experimentation with hallucinogenic mushrooms and cocaine during his interview with the OPM investigator, he comprehensively addressed his marijuana use on his security clearance application, listing the frequency, the related arrests, and the names and addresses of the places where he received counseling. Under these circumstances, the omission of the hallucinogenic mushroom and cocaine experimentation was minor. AG ¶ 17(c) applies.

Guideline F, Financial Considerations

Under this guideline, “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” (AG ¶ 18). Applicant’s history of financial delinquencies triggers the application of AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.”

The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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.

Approximately a third of Applicant’s debts consist of medical expenses that he could not pay because of lack of health insurance. Applicant is now current on his previously delinquent student loans, and he has satisfied another unlisted debt. Also, he retained a credit counselor that helped get old, uncollectible debts removed from his credit reports.

Although lack of income or lack of medical benefits can certainly lead to financial difficulties, they are not indicative of the type of unexpected circumstances covered by AG ¶ 20(b). Consequently, it is not applicable.

Applicant is now current on his student loan payments and has satisfied an unlisted debt in its entirety. Also, he retained a credit counselor to help dispute debts and get them removed from his credit report. Applicant recognizes, however, that getting debts removed from his credit report because they are no longer collectible is not the same as resolving them. His efforts, though insufficient, trigger the partial application of AG ¶¶ 20(c) and 20(d). In sum, it is too soon to conclude Applicant has mitigated the financial considerations security concern given the minimal progress he has made toward debt satisfaction.

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.

Applicant's illegal drug use occurred in his early twenties. He no longer associates with his old, drug-using friends, and he has settled down, living with his girlfriend and her daughter. The seriousness of this conduct is outweighed by Applicant's maturity and its remoteness in time.

Applicant readily admitted lying to the OPM investigator about whether he used any illegal drugs other than marijuana. He did not compound the severity of the falsification by providing a false explanation. Moreover, on his security clearance application, he comprehensively addressed his past marijuana usage, disclosing the frequency, the related arrests, and the name and address of the center where he received counseling. Given Applicant's contrite, introspective testimony, I conclude the possibility of recurrence is minimal. Applicant has mitigated the personal conduct security concern.

Conversely, Applicant's financial delinquencies remain largely unresolved. Although getting old, non-collectible delinquencies removed from his credit reports may improve his credit rating, it does not establish a track reform needed to mitigate the security concern. Consequently, I conclude Applicant has not mitigated the financial considerations security concern.

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

MARC E. CURRY
Administrative Judge