



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



In the matter of:)	
)	
-----)	ISCR Case No. 10-06493
)	
Applicant for Security Clearance)	

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

December 7, 2011

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

On May 16, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) noting security concerns arising 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 (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented on September 1, 2006.

In a June April 8, 2011, response, Applicant admitted one of three allegations raised under Guideline E and one of three allegations set forth under Guideline F. He also requested an administrative determination in lieu of a hearing. On August 30, 2011, Department Counsel submitted a File of Relevant Material (FORM), which included 13 attached items. Applicant submitted a timely response to the FORM that included seven attachments. The case was assigned to me on November 29, 2011. Based on a review of the case file, I find Applicant failed to meet his burden regarding the security concerns raised. Security clearance is denied.

Findings of Fact

Applicant is a 28-year-old help desk analyst who has worked for the same defense contractor since June 2009. He earned a high school diploma and completed about three semesters of college. Applicant is single and has no children.

In 2005, Applicant was terminated from a job due to tardiness.¹ He used marijuana on various occasions in 2007, while attending college. In December 2008, he was dismissed from college after failing to rehabilitate his grade point average (GPA) during academic probation. In March 2009, he was terminated from another job after being cited for inaccuracy on his time sheet. Applicant stated that the dismissal was without cause.²

In April 2009, while completing a Questionnaire for National Security Positions, he answered “no” to Section 23: Illegal Use of Drugs or Drug Activity.³ In thus answering that question, Applicant denied using illegal drugs, including marijuana, in the preceding seven years. He certified his answers to that application and wrote, “I’ve completed all previous questions truthfully and to the best of my knowledge. I can provide any additional details if necessary.”⁴ He similarly denied past drug use in response to an investigator’s questioning during an April 26, 2010, interview.⁵ In completing signed interrogatories notarized on October 16, 2010, Applicant wrote, “Marijuana not used. I tried it several years ago a few times and the amount was very minimal.”⁶ After noting that he currently takes Adderall, a prescription medication generally used for Attention Deficit Hyperactivity Disorder (ADHD), he stated, “[w]hen initially answering questions related to past drug use, I didn’t remember using marijuana several years ago. It didn’t stand out in my mind when that question came up.”⁷ On October 6, 2010, Applicant exchanged emails with his security officer. In one email, he wrote that he was “curious about the security clearance process – regarding answers we’d given to any previous questions. If we remember or find information that was different than what was previously given, can we notify someone and make a

¹ Applicant admits allegation (¶ 1.a) that he was dismissed for “tardiness and attendance problems,” but noted that it was tardiness that led to his dismissal. FORM, Item 4 (Response to the SOR), dated Jun. 8, 2011).

² FORM, Item 9 (Response to Interrogatories, signed Nov. 16, 2010) at 7.

³ See SOR allegation ¶ 1.b.

⁴ FORM, Item 6 (Questionnaire for Investigations Processing, dated Apr. 21, 2009) at 37 of 38.

⁵ See SOR allegation ¶ 1.c.

⁶ FORM, Item 8 (Response to Interrogatories, signed Oct. 16, 2010) at 3.

⁷ *Id.* at 6.

correction? Sometimes I forget things but remember them later. . . .”⁸ Subsequently, he also explained that he had forgotten about the incidents until his girlfriend reminded him of his 2007 drug use after he had completed the 2009 security clearance application and 2010 interview.

Since starting his current job, Applicant has proved to be an impressive worker. His supervisor describes him as a “person of very good moral character . . . with integrity . . . [and] is also hard working and dedicated, and never leaves a job unfinished.”⁹ One work peer wrote, “when faced with situations at work that he might not know the answer to, [Applicant] checks with co-workers to ensure that he is always performing actions within the organization’s [sic] policies and guidelines.”¹⁰ Another work peer wrote that he “uses good judgment.”¹¹

In his personal life, Applicant recently completed financial counseling and a telephonic financial planning program.¹² He has a total current monthly income of \$2,338 and \$3,467 in expenses, including student loan payments, leaving a net monthly negative remainder of \$1,129.¹³ His financial counselor recommended that he comport his spending to allow for adjusted living expenses of \$2,530, leaving him deficient by only \$192 each month in income. It was recommended that he track his daily expenditures, work all available overtime, and seek counsel regarding his student loans in order to adopt the recommended budget.¹⁴ It is his intention to do so. Regarding his student loans, he was urged to seek a hardship deferral and to consolidate the loans.¹⁵ He was previously denied a request to consolidate his student loans in April 2011.¹⁶

At issue in the SOR are three delinquent debts, amounting to about \$78,180. Applicant admitted the allegation regarding a charged-off \$23,655 student loan (¶ 2.b), but denied related allegations concerning two other charged-off student loans for

⁸ Response to the SOR, Enclosure 1.

⁹ Response to the FORM, Enclosure 1, Letter 2 (dated Oct. 25, 2011).

¹⁰ *Id.* at Enclosure 1, Letter 3 (dated Oct. 28, 2011).

¹¹ *Id.* at Enclosure 1, Letter 1 (dated Oct. 19, 2011).

¹² Response to the FORM, Enclosures 3 and 4 (Reports).

¹³ Response to the FORM, Enclosure 2 at 4 (Client Budget). The budget reflects payments on three student loans, with the recommendation that he eliminate payments on one account, presumably under the assumption one might be deferred. However, there is no record evidence showing that actual payments have been made on the specific student loans at issue (ie. payment stubs, receipts, debit reports, statements, etc.).

¹⁴ Response to the FORM, Enclosure 2 at 3 (Case Action Plan).

¹⁵ Response to the FORM, Enclosure 3 at 1 (Notes).

¹⁶ Response to the FORM, Enclosure 6 at 1 (Letter, dated Apr. 15, 2011).

\$30,315 (¶ 2.a) and \$24,210 (¶ 2.c). Applicant reported the following to provide updates on the status of those delinquent debts:

1.a – Applicant contacted the lender and requested validation of the balance alleged. After receiving a validation letter, he inquired about available repayment options. He provided evidence of four earlier payments made between 2007 and 2008. In 2010, he preauthorized six monthly payments of \$301. Applicant provided evidence of two such preauthorized payments (February 2011 and April 2011) for the six-month period ending May 2011. He wrote, however, that all six contemplated preauthorized payments were made during that period. In his June 2011 SOR Response, he noted that he would be contacting the lender to renegotiate the amount due for future monthly payments. However, no proof of correspondence or additional payments on a formalized repayment plan was included in his October 31, 2011 Response to the FORM.

1.b – Applicant contacted the lender. He referenced a credit report entry showing a date of last activity on the account of April 2011 with an increased balance of \$29,990 (\$23,655 in the SOR). No evidence of recent payments was submitted in his October 31, 2011 Response to the FORM.

1.c – Applicant contacted the lender. He has concluded that this account was transferred to the lender noted at 1.a. Consequently, he cross-referenced to the past payments noted under that allegation. In his June 2011 SOR Response, he noted that he would contact the collection agent about renegotiating monthly installments on the account. However, no proof of additional payments or activity on a formalized repayment plan was included in his October 31, 2011 Response to the FORM.

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the AG. The AG lists 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 over-arching 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.

The United States Government (Government) must present evidence to establish controverted facts alleged in the SOR. It is an applicant's responsibility to

present “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel”¹⁷ The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.¹⁸

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 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 about 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.”¹⁹ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”²⁰ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.²¹ A security clearance denial 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 E – Personal Conduct

Security concerns arise from matters of personal conduct because “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.”²² In addition, “any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process” is of special interest.²³

¹⁷ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

¹⁸ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

¹⁹ See also EO 12968, § 3.1(b) and EO 10865 § 7.

²⁰ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

²¹ *Id.*

²² AG ¶ 15.

²³ *Id.*

Applicant was terminated from a job for tardiness in 2005, when he was 22 years old. More significantly, he incorrectly denied using marijuana within the preceding seven years when he completed an April 2009 security clearance application. He again denied having used marijuana during an April 2010 interview with an authorized investigator. These denials, if intentional, reflect deliberate attempts to omit or conceal the fact he used marijuana in 2007. Personal Conduct Disqualifying Condition (PC DC) AG ¶ 16 (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*) and 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*) apply. With PC DCs potentially raised, the burden shifts to Applicant to mitigate the security concerns.

Applicant argued that he forgot about his 2007 drug use when he completed his April 2009 security clearance application and during his April 2010 interview. Apparently, it was only after prompting by his girlfriend at some point between April 2010 and October 2010 that he remembered having used marijuana, a proscribed drug, on more than one occasion three years earlier. Although, he ultimately admitted his past drug use, a significant amount of time passed before his disclosure was made. Such recent facts obviate application of Personal Conduct Mitigating Condition (PC MC) AG ¶ 17 (a) (*the individual made prompt, good faith efforts to correct the omission, concealment, or falsification before being confronted with the facts*) and AG ¶ 17 (c) (*the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment*). To the extent that he ultimately divulged information about his past drug use on his own initiative and after an attempt to seek guidance from his security officer, AG ¶ 17 (e) (*the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress*) applies in part. None of the other mitigating conditions apply.

Guideline F – Financial Considerations

In this case, Guideline F is the appropriate guideline for consideration. Under that guideline, “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.”²⁴ Here, Applicant has considerable delinquent debt, of which he admits one delinquent account with a balance between about \$23,000 and \$29,000 (SOR allegation ¶1.b). Although he has sought financial counseling and is trying to improve his finances, he currently has a negative monthly net remainder. There is no evidence of consistent and timely payments on any of the accounts alleged. In light of these facts, Financial

²⁴ AG ¶ 18.

Considerations Disqualifying Conditions AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c) (*a history of not meeting financial obligations*) apply. With such conditions raised, the burden moves to Applicant to mitigate related security concerns.

The multiple debts at issue generally became delinquent in the mid-2000s, while Applicant was in college. Applicant provided argument and some evidence suggesting that the loans noted in SOR allegations ¶¶ 1.a and 1.c may be related, but there is no conclusive documentary evidence linking the two as duplicates. He also provided evidence of a few past payments on one of the loans (¶ 1.a), but his proof does not reflect an established and consistent repayment plan or notable debt reduction. More importantly, there is no evidence of regular, timely, and on-going payments on the loan obligations at issue. Given his current negative monthly net remainder and the negative net remainder still remaining after he adopts his financial counselor's proposed budget, Applicant's present financial situation remains dubious. Neither Financial Considerations Mitigating Condition (FC MC) 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*) nor AG ¶ 20 (d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies.

In relying on the record in an administrative determination, Applicant's situation must be assessed based on the limited facts offered. While he was terminated from at least one job for cause, there is no evidence that he disputed his dismissal formally, and he did not present documentary evidence demonstrating that his termination was unjust. Aside from these job losses, there is insufficient evidence regarding the reason why his debts are delinquent to give rise to 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*).

Applicant has received much needed financial counseling. The recommended budget that resulted from that counseling should help Applicant in the future. At this point, however, there is little evidence that it has helped Applicant implement a workable scheme for satisfying the debts at issue. Therefore, 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*) does not 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 an applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). 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. In choosing a decision without a hearing, however, there are scant facts of record. It is noted that Applicant is a 28-year-old with a high school diploma who attended some college. Both his financial issues and his personal conduct issues arose when he was in his mid-20s. Despite the irresponsibility he demonstrated at work and at school a few years ago, he appears to have matured considerably in the past two years. He has won the respect of his supervisor and colleagues as a moral and productive employee. His materials in response to the SOR and FORM were well presented and organized.

With regard to Applicant's personal conduct issues, I would be remiss in not noting Applicant's comment in 2010 that he currently takes the ADHD medication Adderall. Such medication for that condition is known to be highly effective and likely contributed to Applicant's improved focus, recollection, and work-related performance over the past couple of years. ADHD could also be a likely explanation for his failure to initially disclose what appears to have been a brief and infrequent use of marijuana. Applicant's denial that he intentionally meant to falsify or mislead in denying past drug use seems genuine. It is hard to believe that, in October 2010, he could have plotted to utilize emails with his security officer concerning his difficulties with recollection as a future disclaimer for his failure to disclose his past marijuana use. Regardless, since that time, he has been fully candid about his past drug use. Given these factors, I conclude that Applicant has presented sufficient evidence to mitigate personal conduct security concerns.

Applicant has received financial counseling and is working toward resolving his debt-related issues. Although he provided evidence that he has been in contact with his lenders, he failed to provide sufficient documentary evidence that he has adopted the budget proposed by his financial counselor. More importantly, he has yet to develop a demonstrated record of timely and consistent payments on his student loans. While he appears poised to begin such a plan, it has not been implemented. This process does not require repayment of all of one's debts. But it does demand that there be a workable plan in place and evidence demonstrating that it has been successfully implemented. Given the facts, Applicant has yet to meet that standard. Given the scant facts of record, I conclude that Applicant failed to meet his burden. Financial considerations security concerns remain unmitigated. 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 E:	FOR APPLICANT
Subparagraphs 1.a-1.c:	For Applicant

Paragraph 2, Guideline F:

AGAINST APPLICANT

Subparagraphs 2.a-2.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 access to classified information. Clearance denied.

ARTHUR E. MARSHALL, JR.
Administrative Judge