



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



In the matter of:)	
)	
)	ISCR Case No. 11-01245
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

12/14/2012

Decision

CURRY, Marc E., Administrative Judge:

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

Statement of the Case

On July 16, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F, financial considerations, and G, alcohol consumption. 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.

DOHA received Applicant's answer to the SOR on August 6, 2012. Applicant admitted all of the allegations and requested an administrative determination. On September 5, 2012, after the Department Counsel previously assigned to the case had

requested a hearing, it was assigned to me. A notice of hearing was issued on October 3, 2012, scheduling the case for October 24, 2012. I held the hearing as scheduled. I received seven Government exhibits (GE 1-7), and 11 Applicant exhibits. (AE A-K) At Applicant's request, I left the record open for him to submit additional exhibits. He submitted six additional exhibits (AE J-Q) that I incorporated into the record. DOHA received the transcript (Tr.) on November 1, 2012.

Findings of Fact

Applicant is a 35-year-old single man. He earned a GED in 1997, and he briefly attended a trade school in 2000. For the past eight years, he has been working for a defense contractor that manufactures military gear and ammunition. (Tr. 21)

In the early 2000s, Applicant lived with his then-girlfriend. She was a profligate spender and ran up debt on their joint credit cards. Unable to satisfy their debts, Applicant and his then-girlfriend filed for Chapter 13 bankruptcy protection in October 2003. By February 2004, Applicant's then-girlfriend "got her act together" and started helping him pay the bills. Consequently, at their request, the Chapter 13 bankruptcy petition was withdrawn. (Tr. 31-32)

Later in 2004, Applicant and his then-girlfriend separated. Before the separation they lived in a home that they owned jointly. After she moved out, she stopped helping Applicant pay the mortgage. Unable to pay the mortgage by himself, Applicant filed for Chapter 13 bankruptcy protection in May 2004. The debt listed in the bankruptcy petition was limited to the mortgage, totalling \$54,000. (GE 4 at 4)

Approximately four months after filing the second bankruptcy petition, Applicant lost his job. (GE 1 at 23-25) He fell behind on the bankruptcy payments prompting the court to dismiss the petition. (GE 4 at 4) Shortly thereafter, Applicant lost his home through foreclosure. (GE 4 at 5)

The SOR alleges 16 delinquent debts totalling approximately \$14,600, including three state income tax liens (subparagraphs 1.c-1.e), two federal income tax liens (subparagraphs 1.g, 1.h), two student loans (subparagraphs 1.f, 1.j), medical bills, (subparagraphs 1.i, and 1.l-1.n)¹, utilities (subparagraphs 1.k and 1.p), and a court fee (subparagraph 1.q). Applicant's state tax liens cover tax years 2007 through 2010, and 2012. They total \$5,285. He has been making \$108 monthly payments. (AE K) It is unclear from the record how long he has been making these payments. Applicant satisfied the lien listed in subparagraph 1.d for \$1,405. (AE D) The remaining balance of back taxes totals approximately \$4,100. (AE K, AE N)

¹Subparagraph 1.o is a duplicate of subparagraph 1.n. (Tr. 27)

The federal income tax delinquencies total approximately \$360 and cover the years 2008 and 2009. Applicant contends that he satisfied them, but provided no documentary supporting evidence. (Tr. 25)

Applicant's medical bills total approximately \$1,050. The largest medical bill totals \$564. (subparagraph 1.l) Applicant contends that he has been satisfying subparagraph 1.l with \$100 monthly payments. (Tr. 26) The exhibit that Applicant referenced in support of this contention does not establish that he has been paying this creditor. (AE A) Applicant intends on satisfying subparagraphs 1.i, 1.m, and 1.n after he satisfies the larger debts. (Tr. 26-27, 37)

The school loans, as listed in subparagraphs 1.f and 1.j, total approximately \$5,100. Applicant contends that he satisfied subparagraph 1.f in the amount of \$4,227. (Tr. 26) He provided no proof. Applicant has been satisfying subparagraph 1.j, totalling \$916 with \$100 monthly payments. (AE O)

Applicant's delinquent utility bills total approximately \$700. He accrued them between 2002 and 2004 when he owned a home. (GE 4 at 6) Subparagraph 1.k, totalling \$176 remains outstanding. Applicant has reduced the debt listed in subparagraph 1.p from \$565 to \$306. (AE A, AE C) According to the creditor, however, he has not complied with the payment arrangement they negotiated. (AE C)

Applicant owes approximately \$1,900 to the state division of parole and probation for court fees related to a September 2011 arrest. Applicant was charged with driving a vehicle while under the influence of alcohol (DUI) and driving a vehicle while impaired, after driving his car off the road and crashing. Under a plea agreement, Applicant pleaded guilty to the first charge and the second charge was dismissed. He received probation before judgment and was ordered to pay the court fee, as noted above, in \$112 monthly increments, beginning in January 2012. (AE F) As of September 2012, Applicant was behind on his court payments. (AE M)

Applicant earns \$50,000 per year. (Tr. 52) He has approximately \$1,800 invested in a 401(k) account, and maintains a balance of approximately \$480 in his checking account. He maintains a budget and has approximately \$300 of monthly discretionary income. (Tr. 53)

Applicant successfully completed a 26-week drug and alcohol education course as required by the court after his September 2011 arrest, as referenced above. The course requirements included submitting to random urinalyses, alcohol abstinence for the term of the course, and attending Alcoholics Anonymous classes. (AE B)

Before the alcohol-related arrest, Applicant drank approximately three beers per week, on average. (Tr. 59) He admits that when he was arrested, he was highly intoxicated.

Applicant no longer drinks alcohol. Although Applicant was not diagnosed with either alcohol abuse or dependence, he continues to voluntarily attend AA classes. (Tr. 42)

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 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 delinquent debts 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.

Applicant's financial struggles began in the early 2000s when his girlfriend moved from their home and stopped helping with the mortgage and the other bills. However, only approximately \$1,600 of his delinquencies stem from the period of their breakup. The remainder, including most importantly, the income tax delinquencies, were accrued years after Applicant and his girlfriend separated. AG 20(b) does not apply.

Applicant has steadily been paying his state income tax delinquencies through monthly \$108 increments, and he is making payments toward the satisfaction of subparagraph 1.j. Conversely, he has not been adhering to the payment plan to satisfy the court fees stemming from his 2011 arrest, and the debt listed in subparagraph 1.p. Also, he presented no documentation supporting his contention that he satisfied the \$4,227 student loan and the federal tax liens. I conclude that Applicant has presented enough evidence to trigger the application of AG ¶ 20(d), but not AG ¶ 20(c).

Guideline G, Alcohol Consumption

Under this guideline, "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." (AG ¶ 21) Applicant has never been evaluated or diagnosed with alcohol abuse or dependence. AG ¶ 22(e), "evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program," does not apply.

Nevertheless, the degree of intoxication and the seriousness of the DUI offense triggers the application of AG ¶ 22(a), "alcohol 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;" and AG ¶ 22(e), "habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent."

Applicant successfully completed the court-ordered alcohol-education course. Although he was not required to maintain abstinence after completing the course, he no longer drinks alcohol. Also, he voluntarily attends AA. AG ¶ 23(a), ". . . the behavior was so infrequent . . . that it is unlikely to recur . . . ;" and AG ¶ 23(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)," 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 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 was a casual drinker before his 2011 DUI charge. Consequently, although the episode leading to the accident was serious, I conclude it was an anomaly. Applicant successfully completed court-ordered alcohol education and has voluntarily decided to quit drinking alcohol. He has mitigated the alcohol consumption security concerns.

Applicant has been satisfying some of his debts and intends to satisfy more of them as he finishes paying the ones that he is currently working toward satisfying. However, he is not in compliance with two of the payment plans that he arranged. Also, he failed to provide proof that he had satisfied the \$4,227 student loan and the federal income tax liens. Under these circumstances, it is too soon to conclude that Applicant has mitigated the financial consideration security 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.q:	Against Applicant
Paragraph 2, Guideline G:	FOR APPLICANT
Subparagraphs 2.a-2.b:	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.

MARC E. CURRY
Administrative Judge