



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



In the matter of:)	
)	
)	ISCR Case No. 11-01277
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Candace Garcia, Esq., Department Counsel
For Applicant: *Pro se*

October 25, 2011

Decision

LYNCH, Noreen A., Administrative Judge:

On May 31, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) listing security concerns arising under Guideline F (Financial Considerations) and Guideline H (Drug Involvement). 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 in September 2006.

Applicant timely answered the SOR and requested an administrative determination. Department Counsel submitted a File of Relevant Material (FORM), dated August 16, 2011.¹ Applicant received the FORM on August 22, 2011. He did not submit additional information. On October 6, 2011, the Director, DOHA, forwarded the case for assignment to an administrative judge. I received the case assignment on

¹The Government submitted eight items in support of its case.

October 13, 2011. Based on a review of the case file, submissions, and exhibits, I find Applicant did not meet his burden regarding the security concerns raised. Security clearance is denied.

Findings of Fact

In his answer to the SOR, Applicant admitted the majority of the allegations under Guideline F, with the exception of SOR ¶¶ 1.e-1.h and 1.j which he denies. He admitted the allegations under Guideline H, SOR ¶¶ 2.a and 2.b.

Applicant is 51 years old. He graduated from high school in May 1978. He is married and has three children. He served in the U.S. Marine Corps from 1979 until 1985. Applicant has been employed with his current employer since June 2008. (Item 4)

When Applicant left the military, he worked for one company from 1985 until 2006. After that he held a variety of positions. He was unemployed from approximately July through October 2006. He has been consistently employed since 2006. His salary, however, was reduced.

The SOR lists 12 delinquent debts that total approximately \$25,978. The credit reports confirm them. (Items 6, 7 and 8) Applicant listed his delinquent accounts, including student loans and credit cards on his recent security clearance application. The debt in 1.i is resolved. The Government concedes that two debts 1.f and 1.g have been paid. The remaining debts are listed as delinquent on a recent credit report. Applicant did not present any documentation to support his claims that he has paid certain debts.

Applicant has been working with a debt consolidation company since January 2009, but there is no indication as to which accounts have been paid or settled. Applicant reports that he pays \$300 a month to the consolidation company so that they can settle his delinquent debts. (Item 3)

When Applicant completed his June 2010 security clearance application, he noted that he used marijuana in May 2010 with a friend on his birthday. He also acknowledged that he used marijuana in March 2009 for the first time in "quite a few years."

Applicant noted in his DOHA interrogatories that he used marijuana in high school and his early 20's. He used marijuana with friends or alone. He reports that he stopped when he was 30 years old due to his family responsibilities.

Applicant admitted that he tested positive for marijuana use in 1982. At that time he was in the Marine Corps. He reports that he was having a party and some of his guests were smoking marijuana. When he reported to reserve duty the following day, he was selected for a drug test. He failed the test "because of the party." He was adamant that he did not use marijuana.

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, 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 in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The United States Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." ² The burden of proof is something less than a preponderance of evidence. ³ The ultimate burden of persuasion is on the applicant. ⁴

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 protect 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 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

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

applicant concerned.”⁵ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁷ The decision to deny an individual a security clearance 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 F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

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.” It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant has delinquent debts amounting to \$25,978. Although he denied some debts in his answer to the SOR, he acknowledged others in his interview and his security clearance application. Consequently, Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

Applicant’s debts are recent and ongoing. He intends to pay his bills but he has not done so. Consequently, Financial Considerations Mitigating Condition (FCMC) 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) does not apply.

Financial Considerations Mitigating Condition (FC MC) 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)

⁵ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

applies. As noted, Applicant left a job in 2006, and was underemployed. However, he has been working since 2006. He was unemployed for a period of time as well. Certainly this exacerbated his financial difficulties. He did not present information to show that he acted reasonably under the circumstances. I find that he did not act reasonably under the circumstances. This mitigating condition does not apply fully.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. Applicant provided documentation that he has resolved several debts listed in the SOR. He claims that other accounts have been paid but did not produce any evidence to support his assertion. He did not present evidence that he received financial counseling which obviates the applicability of FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem. I do not find that there are clear indications that the problem is being resolved or is under control).

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.

(a) 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;

(b) drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying:

(a) any drug abuse (see above definition);

(b) testing positive for illegal drug use;

(c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;

(d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence;

(e) evaluation of drug abuse or drug dependence by a licensed clinical social worker who, is a staff member of a recognized drug treatment program;

(f) failure to successfully complete a drug treatment program prescribed by a duly qualified medical professional;

(g) any illegal drug use after being granted a security clearance; and,

(h) expressed intent to continue illegal drug use, or failure to clearly and convincingly commit to discontinue drug use.

Applicant's admitted use of marijuana in high school and on later occasions implicates AG ¶¶ 25(a) and 25(b). He used it with varying frequency as late as 2010. He also tested positive while he was in the Marine Corps in 1982. Thus, AG ¶¶ 25(g) is also a disqualifying condition that is applicable.

AG ¶¶ 26 provides conditions that could mitigate security concerns:

(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;

(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; and,

(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 not mitigated the security concern under the drug involvement guideline. He admits that he used marijuana from around his teen years until age 30, and then on his 50th birthday in 2010. He has not completed any drug rehabilitation program. He stated that he would not use drugs due to family concerns after age 30, but he did use marijuana again in 2010. I find that none of the 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 an 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. 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. Applicant is 51 years old. He has worked for his current employer since 2008. He left a long time position in 2006 and was unemployed and underemployed until late 2006. However, since that time he has worked consistently. He had delinquent debts that are still unresolved. He did pay some debts, but he did not produce documentation or evidence that he has resolved the remaining debts. He has not sought financial counseling.

Applicant admitted to using marijuana in high school and his early 20s. He stated that he stopped when he was 30 years old, but he had another occasion of use when he was 50 years old in 2010. He also tested positive for marijuana when he was in the Marine Corps. Applicant disclosed his use of marijuana on his security clearance application to his credit. However, he has not mitigated the security concerns under the drug involvement guideline.

Applicant submitted insufficient information or evidence to mitigate the security concerns raised in his case. 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 F:	AGAINST APPLICANT
Subparagraphs 1.a- 1.e:	Against Applicant
Subparagraphs 1.f-1.g:	For Applicant
Subparagraphs 1.h-1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraphs 2.a-2.b:	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 a security clearance. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge