



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



In the matter of:)
)
) ISCR Case No. 11-01818
)
)
Applicant for Security Clearance)

Appearances

For Government: Pamela Benson, Esquire, Department Counsel
For Applicant: *Pro se*

05/15/2012

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted an application for a security clearance (e-QIP) on June 21, 2010. On December 7, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns 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 Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented within the Department of Defense on September 1, 2006.

Applicant answered the SOR and requested his case be decided on the written record. Department Counsel prepared a File of Relevant Material (FORM) on February 29, 2012. The FORM was forwarded to Applicant on March 1, 2012. Applicant received the FORM on March 8, 2012. He had 30 days to submit a response to the FORM. He did not submit a response. On May 8, 2012, the FORM was forwarded to the Hearing Office and was assigned to me on that same date. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his answer to the SOR, Applicant admits to all of the allegations in the SOR. (Item 4)

Applicant is a 50-year-old employee of a Department of Defense contractor who has been employed with the contractor since March 2009. From April 1988 to November 2008, he served as an active duty officer in the United States Navy. He received an honorable discharge and was medically retired after over 20 years of service. He previously held a security clearance while on active duty to include TOP SECRET/Sensitive Compartmented Information (TS/SCI). He currently holds a SECRET clearance. His highest level of education is a master's degree. His first marriage ended in divorce in July 2006. Four children were born during the marriage. Applicant has 22-year-old twins, a boy and a girl, a 17-year-old son, and a 15-year-old daughter. He remarried in November 2006. His second marriage ended in divorce in 2010. (Item 5; Item 7; Item 10)

Guideline F – Financial Considerations

In response to section 26 of the e-QIP application, Applicant admitted that he had several delinquent accounts. A subsequent background investigation revealed eight delinquent accounts, a total approximate balance of \$30,967. The debts include: a \$683 debt owed to an apartment placed for collection in September 2006 (SOR ¶ 1.a: Item 8 at 1); a \$55 medical account placed for collection in January 2009 (SOR ¶ 1.b: Item 8 at 1; Item 9 at 1); a \$64 medical account placed for collection in June 2009 (SOR ¶ 1.c: Item 8 at 1; Item 9 at 1); a \$260 medical account placed for collection in October 2009 (SOR ¶ 1.d: Item 8 at 1; Item 9 at 1); a \$1,025 cable account placed for collection in August 2005 (SOR ¶ 1.e: Item 8 at 1; Item 9 at 1); a \$13,307 account that was charged off in August 2008 (SOR ¶ 1.f: Item 8 at 2; Item 9 at 2); a \$14,914 account placed for collection in December 2007 (SOR ¶ 1.g: Item 8 at 2; Item 9 at 2); and a \$659 department store credit card account placed for collection in December 2007. (SOR ¶ 1.h: Item 8 at 2; Item 9 at 2)

In his May 12, 2011 response to interrogatories, Applicant admits that he has been unable to address his finances in a timely fashion. He states that his financial problems are the result of being responsible for the debts of his two marriages, and substantial alimony awarded to his first wife. He is the sole provider for his four children. After he separated from the Navy, he was unemployed from November 2008 to March 2009. He intends on meeting his financial obligations. He indicated that he was negotiating payment plans with his creditors. (Item 7 at 6-8, 11)

Applicant did not provide any additional information or documents related to his efforts to resolve his delinquent accounts in response to the SOR. He also did not respond to the FORM.

Guideline H – Drug Involvement

Applicant admits to using marijuana on one occasion in May 2010. He discovered his daughter and her friend smoking marijuana at his home. He was upset over his pending divorce and decided to try it. He took two hits and fell asleep. Applicant admits that he held a security clearance when this occurred. He also knew it was wrong. He later realized he made a terrible mistake and told his children about the incident and said they were never to bring drugs into his home again. Applicant claims it was an isolated incident. He had never used marijuana before the incident and does not intend to use marijuana in the future. (Item 6; Item 7 at 5)

Applicant states that his illegal drug use was an “exceptionally stupid indiscretion.” He told the truth when questioned by the investigator. He states he does not have a pattern of illegal drug use as evidenced by his 20 years of active service and countless negative urinalysis samples. He states it will never happen again. He states his marijuana use cannot be used to embarrass or blackmail him. He is dedicated to the service of his country and is willing to undergo increased drug screening of any type or frequency. He requests that the milestones and achievement in his Navy career be considered.

In his response to the SOR, Applicant indicated he was on long-term disability and was not expected to return to work in the foreseeable future. The Government checked Applicant’s status and his FSO confirmed that he is working full-time. The FSO did not know why Applicant would say he was on long-term disability. (Item 4; Item 11)

Policies

When evaluating an applicant’s suitability for a security clearance, the 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, which are useful 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.

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 that 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 relating to the guideline 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 over-extended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition AG ¶19(a) (an inability or unwillingness to satisfy debts) and AG ¶19(c), (a history of not meeting financial obligations) apply to Applicant’s case. Applicant incurred numerous delinquent debts that he has been unable or unwilling to pay over the past seven years.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several mitigating conditions potentially apply to Applicant’s case:

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. Although Applicant intends to resolve all of his delinquent accounts, he has not provided evidence to show that he is making payments or paid any of his delinquent debts. All of his delinquent debts remain unresolved. Applicant's extensive unresolved debt indicates irresponsible behavior and continues to cast doubt on his reliability, trustworthiness, and good judgment.

AG ¶ 20(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) partially applies because of Applicant's two divorces and his five-month period of unemployment after he separated from the military. I cannot conclude Applicant acted responsibly under the circumstances because he has been employed full-time since March 2009, but has not begun to resolve his delinquent debt other than contacting his creditors. No payments have been made even towards the debts with low balances.

AG ¶ 20(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) does not apply. There is no evidence in the record, that Applicant received financial counseling. In fact, the case file does not have evidence of Applicant's current budget so it is impossible to determine whether he is capable of paying his debts. Considering Applicant has not taken steps to resolve any of his delinquent accounts, his financial situation is unlikely to be resolved in the near future.

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. Applicant provided no proof that he has resolved any of the delinquent debts in the SOR. While Applicant intends to pay all of his debts in the future, the DOHA Appeal Board has held that statements of future intent to pay debts, without corroborating evidence such as consistent steps already taken, are entitled to little weight. (ISCR 07-08049 at 4 (App. Bd. July 22, 2008) An expressed intention to pay one's delinquent debts in the future, without actions, is not a good-faith effort to resolve one's debts. The financial considerations concern is not mitigated.

Guideline H, Drug Involvement

The security concern relating to the guideline for Drug Involvement is set out in AG ¶24:

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.

The guideline notes several disqualifying conditions that could raise security concerns. I find the following drug involvement disqualifying conditions apply to Applicant's case.

AG ¶25(a) (any drug abuse);

AG ¶25(c) (illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia); and

AG ¶25(g) (any illegal drug use after being granted a security clearance).

Applicant used marijuana on one occasion in May 2010. AG ¶25(a) applies. AG ¶25(c) also applies because Applicant possessed the drug on that occasion. AG ¶25(g) applies because Applicant used illegal drugs after being granted a security clearance. He possessed a SECRET security clearance at the time.

The Government's substantial evidence and Applicant's admissions raise security concerns under Guideline H, Drug Involvement. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. September 22, 2005))

Guideline H also includes examples of conditions that could mitigate security concerns arising from drug involvement. The following mitigating conditions potentially apply to the Applicant's case:

AG ¶ 26(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); and

AG ¶ 26(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).

None of the mitigating conditions apply. AG ¶ 26(a) does not apply because Applicant's decision to use marijuana raised questions about his reliability, trustworthiness, and good judgment. Applicant was entrusted with a security clearance

during his 20 years of active duty military service. He was an employee of a DoD contractor and held a SECRET clearance at the time he chose to use marijuana. He was fully aware that illegal drug use was not compatible with possessing a security clearance, but chose to use it anyway. While Applicant was honest about his illegal drug use during his background investigation, questions about his judgment remain.

AG ¶ 26(b) does not apply. Applicant's illegal drug use was recent. He did not provide a signed statement of intent to refrain from illegal drug use with automatic revocation of clearance for any violation. Even if he had done so, it would be given minimal weight because of his decision to use marijuana while holding a security clearance. Applicant held a security clearance during his career in the Navy. He was fully aware of the security concerns with illegal drug use. His decision to use marijuana raises questions about his overall judgment. Applicant has not met his burden to mitigate the security concerns raised under Guideline H, Drug Involvement.

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.

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 considered Applicant's over 20 years of active military service in the U.S. Navy. I considered his work as a contractor for the Department of Defense since March 2009. I considered Applicant's decision to use marijuana while possessing a security clearance. His conduct, although it appears to be a one-time use, raises serious questions about his judgment and reliability. Security concerns also remain pertaining to Applicant's extensive unresolved debts. Applicant has not met his burden to overcome the concerns under financial considerations or drug involvement.

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.h:	Against 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

ERIN C. HOGAN
Administrative Judge