



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



In the matter of:)
)
) ISCR Case No. 11-01977
)
)
Applicant for Security Clearance)

Appearances

For Government: Braden Murphy, Esquire, Department Counsel
For Applicant: *Pro se*

03/29/2013

Decision

WHITE, David M., Administrative Judge:

Applicant deliberately denied having delinquent debts and drug-related criminal charges on his security clearance application. His attempts to justify these falsifications were not credible. The evidence is insufficient to mitigate resulting security concerns. Based upon a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on August 30, 2010. On July 26, 2012, the Department of Defense issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline E (Personal Conduct). 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 for Determining Eligibility for Access to Classified Information*, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing (AR) on August 23, 2012, and requested that a decision be reached on the written record without a hearing. On September 18, 2012, Department Counsel wrote to Applicant informing him that Department Counsel had requested a hearing before an administrative judge pursuant to Directive ¶¶ E3.1.7 and E3.1.8. Department Counsel was prepared to proceed on November 19, 2012. The case was assigned to me on November 28, 2012. DOHA issued a Notice of Hearing on December 10, 2012, setting the case for January 22, 2013. Due to the need to briefly continue an unrelated case originally scheduled for the same date, DOHA issued an Amended Notice of Hearing on January 8, 2013, and I convened the hearing, as rescheduled, on January 24, 2013. I granted Department Counsel's request to amend the SOR to conform to the evidence pursuant to Directive ¶ E3.1.17. The Government offered exhibits (GE) 1 through 6, which were admitted without objection, and Hearing Exhibit (HE) I, a list of Government exhibits. Applicant offered no documentary exhibits, and testified on his own behalf. Two additional witnesses testified for him. DOHA received the transcript of the hearing (Tr.) on February 6, 2013.

Findings of Fact

Applicant is a 54-year-old employee of a defense contractor in state A, for whom he has worked since July 2010. He is married for the third time; and has three adult children, two adult stepchildren, and several grandchildren. He is a high school graduate, and served a four-year enlistment in the Navy that ended with his honorable discharge in 1982. He held a security clearance during his naval service and an interim clearance during his current employment until June 2012. (AR; GE 1; Tr. 6-8, 77.)

In his response to the SOR, Applicant admitted the truth of all factual allegations in the SOR. Applicant's admissions, including his statements in response to DOHA interrogatories (GE 6), are incorporated in the following findings.

Applicant was arrested in state A for unlawful possession of methamphetamine during April 1997, as alleged in amended SOR ¶ 1.a.(1). He was stopped by police while driving his brother's truck. During a search of the truck, the police found a drug pipe with residual methamphetamine in a toolbox and arrested Applicant. He was held in custody until his original appearance before a judge, by which time it had been determined that the truck and toolbox belonged to his brother and the charge was dismissed. (GE 3; GE 6; Tr. 40, 42-45.)

From 1999 to 2003, Applicant underwent surgery and was treated for colon cancer and gastric lymphoma. During that period he was under a lot of stress and medication, and remained unemployed until May 2005 after moving to another state. During that time he paid little attention to his finances, and fell into debt. He knew that he had some debts in collections, but was unaware of the details. (AR; GE 1; GE 6; Tr. 36, 42-43, 50-51, 56, 59-60.)

On May 24, 2002, Applicant was arrested for Driving Under the Influence (DUI) of drugs. He stated that he had a prescription for Xanax at the time. He failed to appear at his scheduled court hearing on July 2, 2002, and a bench warrant was issued for his arrest. Applicant was arrested and jailed on that warrant on December 15, 2002, until he appeared in court two days later. Another bench warrant was issued on January 29, 2003, when Applicant failed to appear for his next hearing after his mother called the court to say he was medically unable to attend. On February 6, 2003, Applicant applied to have the warrant quashed, but he again failed to appear at the scheduled February 14 hearing concerning that application and the warrant was continued. On December 27, 2004, Applicant was arrested again, and held in custody until he posted bail on January 10, 2005. On February 3, 2005, pursuant to a plea agreement, Applicant's charge was reduced to Negligent Driving 1st Degree.¹ Applicant pled guilty to, and was convicted of, that offense. He was sentenced to 90 days in jail (89 suspended), fined \$1,000 (\$500 suspended), placed on 2 years probation, and ordered to undergo a drug assessment. (AR; GE 6.)

Shortly thereafter, Applicant had completed his cancer treatment and his mother sent him to state B to live with his adult daughter. He failed to make required payments toward his fine, and the court sent that account to the collection agency to which it also referred three other unpaid fines. (See SOR ¶¶ 1.b(1) through (4); GE 6.) Applicant also failed to obtain or submit a drug assessment, and the court issued another bench warrant for Failure to Appear. (GE 6.)

On March 9, 2008, while still living in state B, Applicant was arrested and charged with Possession of a Controlled Substance/Narcotics. During his October 2010 interview, he told the OPM investigator that he had been stopped for a traffic violation and an unpaid speeding ticket; then the officer searched his car and found several "Nicotrol" tablets that he had broken into pieces and placed in an unmarked container because he was trying to quit smoking but could not tolerate a full tablet. He said that he was held in jail overnight, but released without formal charges being filed. (GE 6.) Court records confirm that he was arrested, but not prosecuted, and no complaint was filed. (GE 4.) During his hearing, Applicant testified that his ex-wife was in the car at the time of his arrest, and the "Nicotrol" was in her purse. He said that she had broken the lozenges into pieces because she could not take a whole one. He did not explain why those circumstances resulted in his arrest. (Tr. 57-59.)

¹ Applicable state A law states:

A person is guilty of negligent driving in the first degree if he or she operates a motor vehicle in a manner that is both negligent and endangers or is likely to endanger any person or property, and exhibits the effects of having consumed liquor or an illegal drug or exhibits the effects of having inhaled or ingested any chemical, whether or not a legal substance, for its intoxicating or hallucinatory effects.

It is an affirmative defense if the driver has a valid prescription for the drug and consumed it according to the prescription directions.

In March 2007, Applicant incurred a \$699 medical bill, which he failed to pay resulting in its placement for collection the following September. (GE 2.) In March 2010, Applicant moved back to state A. He rented a trailer to move his personal possessions, but failed to pay the \$1,878 bill to the rental company. That company placed this delinquent debt for collection in August 2010. (GE 2; Tr. 36-37.)

Applicant testified that he did not consider the 1997 or 2008 arrests to be reportable incidents when he completed his SF-86 on August 30, 2010. He answered “no” in response to the question asking whether he had ever having been charged with any offense related to alcohol or drugs because the charges upon which he was arrested and jailed were dismissed before trial. He also testified that he “just totally forgot” about his 2002 DUI arrest and subsequent conviction, and in his answer to the SOR he said, “I swear I did not even remember the DUI.” He said that he was not trying to hide it, although he described the incident in some detail to the OPM investigator in October 2010, and did not claim to have forgotten it on that occasion. (GE 6; Tr. 40-42.)

Applicant says that he knew he had delinquent debts that had been placed for collection, but did not know the details and answered “no” in response to the question asking about those debts on his security clearance application because he was in a hurry and had been advised by a friend that the facts would all come out during the subsequent investigation. However, he told the OPM investigator in October 2010 that the four SOR-listed debts placed for collection by the court were for outstanding traffic fines and that he had arranged to make monthly \$100 payments to the collection agency starting the previous month. (Tr. 36-39.)

Applicant’s current wife, who met him when they attended high school together and lost her first husband to cancer, testified that he has turned his life around and is loving and responsible. They have resolved all his formerly delinquent debts and fines, and qualified to purchase a home. After his OPM interview, he obtained a favorable drug assessment and completed all court obligations for his Negligent Driving conviction. His best friend, who has also known him since high school and sponsored him for his current employment after retiring from a successful military career, testified to the same effect. He said that Applicant went through a difficult period in his life when he would not have vouched for him, but has straightened up and become a trustworthy individual who performs very well at work. (AR; GE 6; Tr. 67-79.)

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 (DCs) and mitigating conditions (MCs), which are to be used 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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 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.

Analysis

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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. Of special interest is any failure to provide truthful

and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The DC alleged by the Government and supported by the evidence is:

(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.

Applicant admittedly made false “no” answers in response to questions asking about his financial delinquencies and police record on his August 2010 security clearance application. His explanation that he was not aware of the details of his collection accounts is contradicted by his statement in October 2010 that he had entered into a repayment agreement for four of the six alleged debts, for delinquent court fines, with payments starting the previous month. His claimed ignorance of the unpaid \$1,878 debt for his recent trailer rental is also not credible, due to its recency. I do not find sufficient evidence to discredit his claim of ignorance about the \$699 medical debt, and find that allegation in his favor. Applicant also justified his failure to include his 1997 and 2008 arrests for Possession of a Controlled Substance as drug-related charges because both were dismissed for lack of evidence. However, his claim to have forgotten about his 2002 DUI arrest, with several subsequent arrests and periods of incarceration on bench warrants and ultimate conviction for drug-related negligent driving is not credible. I specifically find that Applicant intended to conceal this information in connection with his attempt to qualify for a security clearance because he knew it would cause problems for him. Security concerns under AG ¶¶ 16(a) were raised by these facts.

Applicant offered insufficient evidence to support any mitigating condition under Guideline E. After careful review of the record, I find that none of them apply. He made no good-faith effort to correct his falsifications, and offered excuses that do not establish his credibility or capacity to be trusted to follow proper security procedures. He said his friend advised him that the truth would come out, but specifically denied being advised by that friend to omit or conceal information on his SF 86. (Tr. 63-64.) His falsifications were made in connection with the application currently under adjudication, and he continues to attempt to justify them without accepting responsibility for his actions.

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 pertinent facts and circumstances surrounding this case. Applicant provided good service in support of U.S. Army training missions during his current employment. His wife and best friend think that he has turned his life around, and will act responsibly in the future. They provide him with an excellent support structure to continue such efforts, and he may well establish eligibility for a security clearance in the future.

However, Applicant is a mature individual who is accountable for his choices and actions. He deliberately failed to disclose substantial negative information concerning his financial and drug-related criminal histories on his security clearance application. This demonstrates his susceptibility to violation of security procedures, and to exploitation or duress. Those who know him well say that he has recently exhibited responsible behavior, but his falsifications are too recent to conclude at this point that recurrence is unlikely. Overall, the record evidence creates substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from his personal conduct.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline E:	AGAINST APPLICANT
Subparagraph 1.a(1):	For Applicant
Subparagraph 1.a(2):	Against Applicant
Subparagraph 1.a(3):	For Applicant
Subparagraph 1.b(1):	Against Applicant
Subparagraph 1.b(2):	Against Applicant
Subparagraph 1.b(3):	Against Applicant
Subparagraph 1.b(4):	Against Applicant
Subparagraph 1.b(5):	Against Applicant
Subparagraph 1.b(6):	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.

DAVID M. WHITE
Administrative Judge