



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



In the matter of:)	
)	
)	ISCR Case No. 11-03909
)	
Applicant for Security Clearance)	

Appearances

For Government: Carolyn Jeffreys, Esquire, Department Counsel

For Applicant: *Pro se*

06/22/2012

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, I conclude that Applicant has mitigated the personal conduct concern, but has not mitigated the security concerns raised under the guidelines for financial considerations and drug involvement. Accordingly, his request for a security clearance is denied.

Statement of the Case

On January 20, 2012, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR), detailing security concerns under Guidelines F (financial considerations), H (drug involvement) and E (personal conduct) of the Adjudicative Guidelines (AG). 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) effective within the DoD for SORs issued after September 1, 2006.

In his Answer to the SOR, dated February 15, 2012, Applicant admitted the allegations under Guidelines F, H, and E. Department Counsel was prepared to proceed on March 30, 2012, and I received the case on April 13, 2012. DOHA issued a Notice of Hearing on May 3, 2012, setting the hearing for May 22, 2012. During the hearing, the Government offered eight exhibits, which I admitted as Government Exhibits (GE) 1 through 8. Applicant testified and offered one exhibit, which I admitted as Applicant's Exhibit (AE) A. I held the record open to allow Applicant to submit additional documentation. He timely submitted one document. Department Counsel did not object to the document, which I admitted it as AE B. Her email forwarding the exhibit is marked Hearing Exhibit I. I received the transcript on May 30, 2012.

Procedural Matters

When Applicant responded to the SOR, he requested a decision based on the written record. However, on March 19, 2012, Department Counsel, pursuant to ¶E3.1.3 of the Directive, requested a hearing before an administrative judge. Department Counsel's memorandum is marked as Hearing Exhibit II. (Tr. 7)

Department Counsel moved to amend the SOR to correct a typographical error. I granted the motion, and amended allegation 3.a under Guideline E. The allegation quoted the security clearance application, and referred incorrectly to "Section 22: Police Record c." The reference is corrected to read, "Section 22: Police Record d." (Tr. 76-77)

Findings of Fact

Applicant's admissions are incorporated as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the record evidence, I make the following additional findings of fact.

Applicant is 44 years old and holds a bachelor's degree in criminal justice. Other than a few months of unemployment in 2002, Applicant has worked steadily since graduating from college. He was a correctional officer from 1990 to 2002. He worked as a security officer for a defense contractor from 2002 to 2004. He was then employed as a project manager by another defense contractor from 2004 to 2005. He worked for three successive defense contractors as a construction surveillance technician (CST) between 2005 and 2012. He frequently worked overseas as part of his job between 2009 and 2012. In February 2012, he began his current position as a CST with a defense contractor. Applicant received his first security clearance in 2002, and was granted a top secret clearance with special access in 2004. (GE 1, 9; Tr. 24-28, 84-85)

Applicant married in 1999, and does not have children. From early 2008 to May 2008, he worked five months in Afghanistan. When he returned to the United States for two months in May 2008, he and his wife agreed to separate. His wife remained living in the house they owned jointly. In July 2008, Applicant went to Iraq, where he worked for four months. Applicant's wife paid the family bills. While he was overseas, Applicant

transferred approximately \$8,000 per month from his bank account to his wife's account so that she could pay their bills, including their \$3,700 monthly mortgage payment. He did not monitor her payments. He returned to the United States in about October 2008, and learned that his wife had not paid the household bills for the previous four months. Their divorce was final in June 2009. Their divorce decree did not assign responsibility for individual debts. (GE 2, 3; Tr. 28-42, 46-50)

Applicant bought his home in 2007 for \$475,000. He financed it with two mortgages and did not make a down payment. After learning in 2008 that his wife had not made the mortgage payment for four months, Applicant contacted the lender to discuss avoiding foreclosure. He was told to send \$15,000, which he did. However, the company decided to proceed with foreclosure. Applicant had to return to his assignment overseas, so he hired a property manager. She advised him to let the foreclosure proceed, and Applicant stopped making payments. He lived in the house from October 2008 until he left it in January 2009. The first mortgage was resolved through the foreclosure, but the second mortgage of approximately \$93,000 was not. (Tr. 18, 42-45, 47-49)

Between 2009 and 2011, Applicant was contacted by companies who held the second mortgage, but he did not respond. In February 2011, the company that holds the second mortgage contacted Applicant with a payment arrangement. It reduced the debt from \$93,552 to \$50,000, and offered a payment plan of \$5,000 down, and monthly payments of \$600.¹ Applicant agreed, and made the down payment. He provided evidence showing he has made each payment since March 2011. He has also paid off several smaller debts that appear on his earlier credit reports. (GE 3-7; AE A, B; Tr. 19, 51-53, 61)

Applicant cosigned with his ex-wife on an automobile loan for a 2003 BMW and a timeshare purchase. The outstanding delinquency on the auto loan is \$5,491 and on the timeshare property is \$11,102. His ex-wife made the payments on these loans, and he has never made payments on them. Applicant testified that she was making timely payments until the divorce. Neither of the two debts was assigned to either Applicant or his wife in the divorce decree. Several years ago, Applicant was contacted by the lender about the auto loan. He stated he would surrender the vehicle, but did not know where it was located. The lender searched for approximately one year, and eventually found the car in a storage facility. It was auctioned, and the deficiency balance is \$5,491. He has not provided his current address to the creditors for these two debts, and he has not been contacted by them at this address. Applicant believes that his ex-wife intends to file a chapter 7 bankruptcy petition, and that she will include the timeshare and auto loans in the petition. His understanding is that, if she successfully discharges the bankruptcy, he will be relieved of responsibility for the auto loan and timeshare debts. (GE 3-7; Tr. 20, 40, 53-56)

¹ Although Applicant testified the company offered to decrease the loan balance from \$93,552 to \$50,000, his credit reports do not reflect that balance. The four credit reports from April 2010 through April 2012 show the balance dropped from \$93,552, to \$88,568, to \$84,968, to \$84,368. (GE 4-7)

Applicant's monthly income varies depending on overtime payments. In April 2012, he earned \$4,200 after deductions. His monthly expenses total \$1,484, leaving a monthly net remainder of approximately \$2,700. (Tr. 54-65)

In 2006, Applicant was in a car with a friend and a few other people, waiting to go into a club. He did not know his friend used marijuana. One person lit up a marijuana cigarette and passed it around. Applicant knew that it was marijuana, but he took one "hit" and passed it on. He testified, "[I] didn't believe that if I tried one puff it would do any harm to me." (GE 2; Tr. 65-66)

Department Counsel questioned him further:

Department Counsel: But when you used the marijuana, did it cross your mind, 'Oh, no. I may have a drug test on Monday'?

Applicant: Yes, it did.

Department Counsel: Okay. But you decided to use it anyway.

Applicant: Yes, because I didn't think a puff—

Department Counsel: Would register?

Applicant: Yes. (Tr. 66-67)

The last time Applicant saw someone use marijuana was February 2012, but he did not know the person. The last time Applicant saw someone he knew using marijuana was in 2006. Since 1990, all of the agencies and companies where Applicant worked have had a policy that prohibits drug use, and all conducted random drug tests. None of Applicant's drug tests have been positive for illegal drug use. He testified that he signed a statement saying he had no intention to use illegal drugs in the future, but he did not have a copy to provide at the hearing. (Tr. 27-28, 72-75, 85-88)

In 1994, Applicant was pulled over for a traffic violation. He was not in the jurisdiction where he worked as a corrections officer. He had his service weapon with him, which was permitted in his own jurisdiction, but not in the jurisdiction where he was pulled over. When the police officer asked if Applicant had a weapon, Applicant said he did, and was charged with possession of a gun. Applicant testified that he appeared in court, and the charge was dismissed. (GE 8; Tr. 22-23)

When Applicant completed his security clearance application in April 2010, it asked, "Have you EVER been charged with a firearms or explosive offense." (emphasis in original) He did not disclose the 1994 gun possession charge. Applicant testified that when he completed the question, he was still thinking of the timeframe listed in the introduction to the questions, which instructed him to review either the previous seven

years or ten years, depending on the type of investigation. He thought the 1994 charge was outside that timeframe. On the same application, Applicant disclosed his use of marijuana in 2006, and his use of an illegal drug while holding a security clearance. (GE 1; Tr. 76-79)

In July 2010, while working overseas, Applicant completed a security interview. The record of the interview, which Applicant adopted on June 8, 2011, notes that Applicant stated he had “not been accused of or admitted to criminal conduct, regardless of whether he was formally charged.” Applicant testified that when the agent asked him about criminal conduct, “He asked me in the last seven years have I been arrested or charged with a misdemeanor or felony and I said no.” When Department Counsel noted that the question, as transcribed in the report, does not indicate a timeframe, Applicant said that the agent had stated the timeframe when he asked the question verbally. During the same security interview, Applicant admitted his delinquent debts and his use of marijuana in 2006. (GE 2; Tr. 80-83)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.² Decisions must also reflect consideration of the “whole-person” factors listed in ¶ 2(a) of the guidelines.

The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the adjudicative factors addressed under Guideline F, Guideline H, and Guideline E

A security clearance decision is intended only to resolve the questions of whether it is clearly consistent with the national interest³ for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the Applicant to refute, extenuate or mitigate the Government’s case. Because no one has a “right” to a security clearance, an applicant bears a heavy

² Directive. 6.3.

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

burden of persuasion.⁴ A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the national interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the government.⁵

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern about financial considerations:

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 SOR alleges that Applicant is delinquent on a second-mortgage loan, a timeshare purchase, and for the deficiency balance on a repossessed automobile. Together, the debts total \$110,145. Applicant is paying on one debt, but two remain unresolved. His failure to meet his financial obligations supports application of disqualifying conditions AG ¶19 (a) (*inability or unwillingness to satisfy debts*), and AG ¶19 (c) (*a history of not meeting financial obligations*),

Under AG ¶ 20, the following potentially mitigating factors are relevant:

(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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(b) focuses on situations where events beyond an applicant’s control affect his ability to meet his financial obligations. Applicant was overseas and did not realize that his ex-wife was not using the funds he provided to pay their mortgage and

⁴ See *Egan*, 484 U.S. at 528, 531.

⁵ See *Egan*; Adjudicative Guidelines, ¶ 2 (b).

other bills. The actions of Applicant's ex-wife during their separation were unforeseen. He acted responsibly when he returned, and worked on repairing his credit. He paid several bills that had become delinquent. He entered into a plan to bring his mortgage loan up-to-date. However, since the separation in 2008, Applicant has ignored two delinquent debts that total approximately \$16,000. He believes that they are his ex-wife's debts because he was only a cosigner. He has not investigated his responsibility, contacted the creditors, or taken other reasonable steps to resolve them. Applicant receives only partial credit under AG ¶ 20(b).

AG ¶¶ 20(d) requires a good-faith effort to resolve debts. Applicant provided evidence that he has worked with the lender for his second mortgage. He has been making the agreed-upon payments consistently for more than one year. He has demonstrated a good-faith effort in relation to this debt. However, he has made no attempt to deal with the two delinquencies related to the repossessed automobile and the timeshare purchase. He relies on second-hand information that his ex-wife will file a bankruptcy petition, a hope that she will include these debts, and an unfounded supposition that he will be absolved of responsibility through her actions. Applicant has not shown good faith in relation to these two debts, and he receives limited mitigation under AG ¶¶ 20(d).

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.

I have considered the disqualifying conditions under AG ¶ 25, especially the following:

- (a) any drug abuse;⁶ and
- (g) any illegal drug use after being granted a security clearance.

Applicant was granted a security clearance in 2002, and a higher level clearance in 2004. He admits that he illegally used marijuana in 2006, and that this conduct occurred after he had been granted a security clearance. Moreover, Applicant was

⁶ The Directive defines drugs as mood- and behavior-altering substances, which include compounds identified and listed in the Controlled Substances Act of 1970 as amended; and 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.

aware that his employer had a policy prohibiting use of illegal drugs. AG ¶¶ 25 (a) and 25 (g) apply.

Two mitigating conditions are relevant under AG ¶ 26:

(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;

(4) a signed statement of intent with automatic revocation of clearance for any violation.

Some mitigation is available to Applicant under AG ¶ 26(b) because he has not used marijuana for the past six years. He testified that most of his friends do not use illegal drugs, and the last time he was with a friend who used marijuana was in 2006. Applicant stated that he signed a statement that he will not use marijuana and other illegal drugs in the future. However, he did not submit such a statement.

Applicant's last use of illegal drugs occurred approximately six years ago and is not recent. It was also infrequent, because he used it only once. However, he used it in a social setting, which could recur in the future. Moreover, he decided to use marijuana after he thought about the possibility of being tested for drug use when he returned to work. He decided to proceed because he thought that one "puff" would not reveal his marijuana use, if he were tested. Applicant made a conscious decision to engage in illegal conduct, and in conduct that was prohibited by his employer. Moreover, he also consciously acted to circumvent his employer's drug testing program. Applicant displayed untrustworthiness, poor judgment, and a willingness to deceive. AG ¶ 26(a) does not apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern about 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.

The following disqualifying conditions are relevant under 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

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

AG ¶ 16(a) and 16 (b) apply when an applicant engages in intentional falsification of information in written or verbal statements provided to the government. The SOR alleges that Applicant deliberately failed to disclose his 1994 gun possession charge on question 22 of his 2010 security clearance application and at his subsequent security interview. On the application, Applicant revealed his 2006 use of marijuana in response to question 23.a. He disclosed additional adverse information in response to question 23.b, when he admitted that he used marijuana while he held a security clearance. At the security interview, he revealed his delinquent debts and his 2006 marijuana use. If Applicant had intentionally decided to withhold negative information, it is unlikely that he would reveal adverse information about illegal drug use and drug use while holding a security clearance, and then hide a 16-year-old misdemeanor charge that was subsequently dismissed. Applicant's conduct does not demonstrate the requisite intent to conceal relevant information. AG ¶¶ 16(a) and 16 (b) do not apply.

Whole-Person Analysis

Under the whole-person concept, an administrative judge must evaluate the applicant's security eligibility by considering the totality of an applicant's conduct and all the circumstances. An 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited guidelines, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant's credit standing suffered, and his home was foreclosed, when his ex-wife stopped paying their debts for four months while he was working overseas. He has since begun a payment plan for his second mortgage, and has been paying on it consistently since 2011. However, he has ignored two other debts totaling more than \$16,000, for which he is jointly responsible with his ex-wife.

Applicant admitted his 2006 marijuana use and his use while holding a security clearance, both on his security clearance application and during his security interview. He did not have the requisite intent to withhold relevant information from the government regarding the 16-year-old gun possession charge. If he deliberately decided to withhold negative information, he would not have disclosed other adverse, and more recent, criminal conduct.

Applicant's illegal drug use cannot be excused as youthful experimentation, because at the time, he was a mature adult 38 years of age. He was also a corrections officer, whose duty was to uphold the law. In all of Applicant's positions since 1990, illegal drug use was prohibited, and random drug tests were administered. Applicant was aware that illegal drug use was a security concern, and that it violated his obligations. Nevertheless, he made a conscious decision in 2006 to use it, believing that if he smoked a small amount, it would not trigger a positive result on a random drug test. His willingness to ignore the law and circumvent drug testing is not consistent with the standards of those who are granted security clearances.

A fair and commonsense assessment of the available information shows Applicant has not satisfied the doubts raised about his suitability for a security clearance. For these reasons, I conclude he has not mitigated the security concerns arising from the cited adjudicative guidelines.

Formal Findings

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a	For Applicant
Subparagraphs 1.b-1.c	Against Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraph 2.a	Against Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraphs 3.a-3.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 interests of national security to allow Applicant access to classified information. Applicant's request for a security clearance is denied.

RITA C. O'BRIEN
Administrative Judge