



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



In the matter of:)
)
) ISCR Case No. 11-06372
)
Applicant for Security Clearance)

Appearances

For Government: Ray Blank, Esq., Department Counsel
For Applicant: *Pro se*

07/13/2012

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated alcohol consumption and drug involvement security concerns, but he has not mitigated financial considerations and personal conduct security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On March 14, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E (personal conduct), F (financial considerations), G (alcohol consumption), and H (drug involvement). The action was taken under Executive Order (EO) 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.

Applicant answered the SOR on April 2, 2012, and requested a hearing before an administrative judge. The case was assigned to me on May 11, 2012. DOHA issued

a notice of hearing on June 4, 2012, scheduling the hearing for June 20, 2012. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 8 were admitted without objection. Applicant testified, but he did not submit any documentary evidence. The record was held open until July 9, 2012, for Applicant to submit additional information. No additional information was submitted. DOHA received the hearing transcript (Tr.) on June 27, 2012.

Findings of Fact

Applicant is a 26-year-old employee of a defense contractor. He has worked for his current employer since 2005. He is applying for a security clearance for the first time. He has an associate's degree. His first marriage ended in divorce in 2010. He remarried in 2012. He has two children, ages seven and three.¹

Applicant started drinking and smoking marijuana when he was in high school. He continued to periodically smoke marijuana, with his last use in 2010. He used prescription painkillers without a prescription between about 2004 and 2008. He used cocaine in 2005 and 2006. He used ecstasy in 2006. He credibly testified that he does not intend to use illegal drugs in the future. He does not associate with anyone who uses drugs. His wife does not use illegal drugs and would disapprove if Applicant used them.²

Applicant was cited for minor in possession of alcohol in 2004. He pleaded guilty and paid a fine. In 2005, he was cited for possession of drug paraphernalia. He was cited for minor in possession of alcohol in 2006. The charge was dismissed. In 2007, he was arrested for public intoxication. He pleaded guilty and paid a fine. In 2008, he was arrested on a warrant for expired inspection and registration and failure to appear. He was cited for expired inspection and registration in 2009 and again in 2010. In July 2011, he was arrested on a warrant for unpaid tickets. He borrowed from his mother and paid all the appropriate fines for his various traffic violations. His current car is registered and insured, and he has a valid driver's license. He still drinks alcohol, but he stated that he only drinks responsibly.³

Applicant has had financial problems for several years. The SOR alleges six delinquent debts with balances totaling about \$12,000. Applicant admitted owing the debts alleged in SOR ¶¶ 1.a, 1.d, 1.e, and 1.f. He denied owing the two other debts. He explained:

I am paying nearly \$600 in child support a month on top of providing for my family. I make \$44,000 annually and it is extremely difficult to maintain my current living situation and also resolve all debt immediately. It is a process that I will have to undergo in order to resolve, but I am extremely

¹ Tr. at 20-22, 52-54; GE 1, 3.

² Tr. at 20-22, 42-50; Applicant's response to SOR; GE 1, 3, 5.

³ Tr. at 20-23, 35-42, 47-51; Applicant's response to SOR; GE 1, 3-5.

willing. I am trying to get everything managed in a manner that will allow me to pay these debts.⁴

Applicant was in a car accident in 2006. He had auto insurance and health insurance, but all his claims may not have been properly processed. Applicant denied owing the \$5,239 and \$387 medical debts alleged in SOR ¶¶ 1.b and 1.c. The \$5,239 debt is reported by Experian on the combined credit report from February 2011. It is not listed on the Equifax credit reports from July 2011 and February 2012. He acknowledged that the debt may be from his car accident. He has not contacted the hospital or the insurance companies to verify the accuracy of the debt. He has not disputed the debt with the credit reporting agencies. Applicant believes he paid the \$387 debt. That debt is reported by Experian on the combined credit report from February 2011, and it is listed on the July 2011 Equifax credit report. It is not listed on the February 2012 Equifax credit report.⁵

Applicant paid several delinquent debts that were not alleged in the SOR. He made a few payments toward his delinquent debts in 2011, but he has not made any payments in 2012. He has not received financial counseling.⁶

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, 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, administrative judges apply the guidelines 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.

⁴ Applicant's response to SOR.

⁵ Tr. at 27-33; Applicant's response to SOR; GE 2, 3, 6-8.

⁶ Tr. at 27, 33; GE 2, 3, 6-8.

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain 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 the applicant may deliberately or inadvertently fail to safeguard 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 EO 10865 provides that adverse 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 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 overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay his financial obligations. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (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;
- (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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant paid several delinquent debts that were not alleged in the SOR. He indicated a desire to pay his debts, but he has not made any recent payments toward any of the debts alleged in the SOR. He has not received financial counseling. There is insufficient evidence for a determination that Applicant acted responsibly and made a good-faith effort to repay or otherwise resolve his delinquent debts. His financial issues are recent and ongoing. I am unable to determine that they are unlikely to recur. They continue to cast doubt on Applicant's current reliability, trustworthiness, and good judgment. None of the mitigating conditions are applicable.

Guideline G, Alcohol Consumption

The security concern for alcohol consumption is set out in AG ¶ 21:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 22. The following are potentially applicable in this case:

- (a) alcohol-related 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

(c) 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.

Between 2004 and 2007, Applicant was charged twice with minor in possession and once for public intoxication. He sometimes drank alcohol to excess and to the point of intoxication. AG ¶¶ 22(a) and 22(c) are applicable.

Conditions that could mitigate alcohol consumption security concerns are provided under AG ¶ 23. The following are potentially applicable:

(a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and

(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).

Applicant's last alcohol-related charge was in 2007. He continues to drink alcohol, but indicated that he only drinks responsibly. I find that Applicant has established a pattern of responsible alcohol use. His alcohol consumption does not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 23(a) and 23(b) are applicable.

Guideline H, Drug Involvement

The security concern 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 25. The following are potentially applicable in this case:

(a) any drug abuse;⁷ and

⁷ Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

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

Applicant possessed and used marijuana, prescription painkillers without a prescription, cocaine, and ecstasy. The above disqualifying conditions are applicable.

AG ¶ 26 provides conditions that could mitigate security concerns. The following are potentially applicable:

(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; and

(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.

Applicant credibly testified that he does not intend to use illegal drugs in the future. He no longer associates with anyone who uses drugs. I find that he demonstrated an appropriate period of abstinence and that illegal drug use is unlikely to recur. AG ¶¶ 26(a) and 26(b) are applicable.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15:

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 following disqualifying conditions are potentially applicable:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-

person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as . . . engaging in activities which, if known, may affect the person's personal, professional, or community standing.

Applicant had multiple drug and alcohol-related charges. He disregarded the law and drove with an expired inspection and registration. He failed to appear in court to address his traffic citations, and he failed to pay his tickets. That conduct showed poor judgment and an unwillingness to comply with rules and regulations. It also created a vulnerability to exploitation, manipulation, and duress. AG ¶¶ 16(c) and 16(e) are applicable as disqualifying conditions.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant paid his tickets after he was arrested on a warrant in July 2011. His current car is registered and insured, and he has a valid driver's license. Those actions have reduced his vulnerability to exploitation, manipulation, and duress. AG ¶ 17(e) is applicable. However, it has only been about a year since his arrest. Insufficient time has passed for a determination that similar conduct is unlikely to recur. Applicant's conduct continues to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 17(c) and 17(d) are not applicable. I conclude that security concerns about Applicant's conduct remain despite the presence of some mitigation.

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 have incorporated my comments under Guidelines E, F, G, and H in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

I considered Applicant's youth and immaturity when he was involved in questionable conduct. I am satisfied that illegal drug use is in his past and that alcohol use is not a problem. However, it has only been a year since his last arrest and he has unresolved financial problems.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has mitigated alcohol consumption and drug involvement security concerns, but he has not mitigated financial considerations and personal conduct 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.f:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-2.h:	Against Applicant

Paragraph 3, Guideline H:	FOR APPLICANT
Subparagraphs 3.a-3.e:	For Applicant
Paragraph 4, Guideline G:	FOR APPLICANT
Subparagraphs 4.a-4.c:	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.

Edward W. Loughran
Administrative Judge