



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



In the matter of:)
)
) ISCR Case No. 11-08998
)
)
Applicant for Security Clearance)

Appearances

For Government: Gregg A. Cervi, Esq., Department Counsel
For Applicant: *Pro se*

06/24/2013

Decision

WHITE, David M., Administrative Judge:

Applicant has more than \$27,000 in unresolved delinquent debts, accrued between November 2007 and March 2011. He claimed to have hired a law firm to help him address the debts, but offered no evidence concerning the agreement or results to date. He also made various admissions concerning marijuana use between 2006 and 2010. Resulting security concerns were not mitigated. Based on a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SF-86) on April 5, 2011.¹ On September 28, 2012, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines F (Financial

¹Item 5.

Considerations) and H (Drug Involvement).² 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 effective in the Department of Defense on September 1, 2006.

Applicant submitted an unsigned and undated written response, and was given an extension of time to properly respond on November 15, 2012.³ He submitted a signed written response to the SOR on January 24, 2013, and requested that his case be decided by an administrative judge on the written record without a hearing.⁴ Department Counsel submitted the Government's written case on April 16, 2013. A complete copy of the File of Relevant Material (FORM)⁵ was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant signed the document acknowledging receipt of his copy of the FORM on April 25, 2013. During the 30 days provided for him to do so, he submitted no additional evidence, made no objection to consideration of any contents of the FORM, and did not request additional time to respond. I received the case assignment on June 10, 2013.

Findings of Fact

Applicant is a 36-year-old employee of a defense contractor. He worked for two companies in the private sector from April 2004 to June 2006, and from June 2006 to April 2011, when he obtained his current position. This is his first application for a security clearance, and he has no prior military service. He graduated from high school in 1995. He has never married, but he and the woman with whom he has lived since February 2001 have three children, ages 11, 10, and 2.⁶

In his response to the SOR, Applicant admitted the truth of the factual allegations concerning his debts, as set forth in SOR ¶¶ 1.a through 1.r, with some explanations, including unsubstantiated claims that the debts alleged in SOR ¶¶ 1.c, 1.f, and 1.k had been resolved. He denied the drug-use allegation in SOR ¶ 2.a, initially stating, "Dates are wrong from 2006-2007 and not on multiple occasions, only a couple of times." In his second response to the SOR, he deleted the words from "and" to "times" that he wrote

²Item 1.

³Item 2; Item 4.

⁴Item 4.

⁵The Government submitted 11 Items in support of the SOR allegations.

⁶Item 5; Item 8.

in his first response after “2007.”⁷ Applicant’s admissions, including those made in response to DOHA interrogatories,⁸ are incorporated into the following findings of fact.

Applicant’s admissions concerning the 18 delinquent debts, totaling \$27,477, are corroborated by entries in two credit bureau reports showing dates of last activity ranging from November 2007 to March 2011. One involves an unpaid civil judgment for \$671 entered against him in February 2003 (SOR ¶ 1.r). Applicant stopped paying toward two credit card accounts, totaling \$8,583 in late 2007 (SOR ¶¶ 1.h, 1.n). During January and February 2008, he stopped making payments toward three additional consumer debts totaling \$5,914 (SOR ¶¶ 1.i, 1.j, 1.k). Between October 2008 and January 2009, he failed to pay three medical bills totaling \$1,265 (SOR ¶¶ 1.e, 1.f, 1.g). Although not alleged in the SOR, Item 9 shows that he failed to pay an additional \$956 medical debt in December 2008. He defaulted on a \$5,198 consumer debt in April 2009 (SOR ¶ 1.o), and on three other debts totaling \$3,612 during October and November 2009 (SOR ¶¶ 1.a, 1.b, 1.l). Three debts totaling \$1,598 (two of which were medical bills) became delinquent during 2010 (SOR ¶¶ 1.c, 1.d, 1.q). Two more debts, incorrectly alleged in SOR ¶¶ 1.m and 1.p to total \$657 but shown in Item 10 to total \$1,157, became delinquent during the two months in 2011 preceding Applicant’s submission of his SF-86.⁹

Applicant claimed in general terms that his financial difficulties stemmed from reduced work hours and commission pay after the economic downturn in 2008, and his children’s mother’s having quit her job during 2010 and 2011 due to her pregnancy. He did not provide details concerning how much income he lost, or what she contributed to their household income. He submitted a personal financial statement showing his annual gross income to be about \$49,750, with a net monthly surplus of \$480. It declared that he made no payments toward medical expenses or insurance, and had no financial assets. Applicant claimed that he was working with a debt management law firm to resolve his delinquencies. He also said that three of his debts had been resolved. He provided no documentation to substantiate or corroborate his claims, despite Department Counsel’s comments in the FORM advising him of the need to do so in order to mitigate financial concerns.¹⁰

Applicant did not submit a budget, or any evidence of savings or other net worth despite his claim of surplus monthly net income. He submitted no evidence of financial counseling or other efforts to establish financial responsibility, except his claim to be working with a law firm. He failed to resolve delinquent debts as small as \$37 and \$50, despite having been informed of their potential security significance during his Office of Personnel Management (OPM) interview more than two years ago.

⁷Item 4.

⁸Items 6 through 8.

⁹Item 4; Item 8; Item 9; Item 10; Item 11.

¹⁰Item 4; Item 6; Item 7.

In response to the question inquiring about use of illegal drugs during the last seven years in Section 23 of his SF-86, Applicant responded, "Yes," and reported dates of marijuana use, "Socially," from 06/2007 to 12/2010 (both estimated).¹¹ During his OPM interview, he claimed that he used marijuana once a week on weekends for approximately six months between 2006 and 2007. He said that he did not recall the exact dates of his use of marijuana, but had not used it since 2007 and "inadvertently entered incorrect dates of 06/07 to 12/10" on his SF-86.¹² His statements concerning this drug use in his SOR responses are detailed above. He did not provide clarification of his position on this issue in response to the FORM, despite Department Counsel's comments highlighting the potential lack of credibility to be accorded his inconsistent and increasingly minimizing statements.

Applicant provided no evidence concerning the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. He submitted no character references describing his judgment, morality, trustworthiness, integrity, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

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

¹¹Item 4 at 25.

¹²Item 8 at 4.

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 F, Financial Considerations

The security concerns under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

Department Counsel asserted, and the record evidence established, security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

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

Applicant’s SOR-listed delinquent debts arose since 2003, and remain substantially unresolved. His financial problems were not shown to have arisen from

incidents beyond his control, but rather resulted from his choices to incur debts for goods and services that he could not afford. He provided no evidence of available income, or other assets, from which to satisfy these debts or avoid incurring additional delinquencies in the next several years. This evidence raises substantial security concerns under DCs 19(a) and (c), thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

(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's SOR-listed delinquent debts arose over the past ten years, and more than \$27,000 in such debt remains unresolved to date. These financial problems are recent, and arose under circumstances that involved Applicant's voluntary choices. He demonstrated neither the capacity, nor a plan, to avoid incurring additional delinquent debt. The ongoing nature of these debts precludes a finding of unlikely recurrence. Applicant failed to show that his reliability, trustworthiness, and judgment have improved, and failed to take any action to resolve these debts until very recently, even if his unsubstantiated claims of working with a law firm are accurate. The evidence does not establish mitigation under MC 20(a).

Applicant offered insufficient evidence to support mitigation under MC 20(b). The undefined economic impact of his reduced income in 2008 and the recent pregnancy of his children's mother may or may not have arisen from conditions beyond his control,

but he did not demonstrate that incurring his delinquent obligations without the means to satisfy them was responsible activity under those circumstances.

Applicant offered no evidence of financial counseling, and did not establish clear indications that the problem is being resolved or is under control. He provided no evidence to establish that his current financial situation has stabilized, or that he has accumulated any net worth to cushion possible unanticipated setbacks in the future. MC 20(c) and 20(d) are therefore inapplicable.

Applicant did not claim or provide proof to substantiate a basis to dispute the legitimacy of any of the debts alleged in the SOR, all of which he admitted, and for which the record evidence provides substantial evidence. Accordingly, he failed to mitigate those allegations under MC 20(e).

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. The DC raised by the evidence in this case is:

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

Applicant admittedly used marijuana on multiple weekends, on a social basis, during some period of time between 2006 and 2010. His descriptions of his recreational drug abuse, during a series of official statements made with acknowledged criminal liability for falsification, reflect decreasing durations and amounts used. However, his statements consistently admit facts sufficient to establish security concerns under AG ¶

25(a), and therefore shift the burden to Applicant to prove mitigation of resulting security concerns.

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's admitted recreational use of marijuana ended in either 2007 or 2010. Some mitigation under AG ¶ 26(a) was accordingly established due to the passage of time. However, his inability or unwillingness to consistently describe the nature and extent of his drug abuse casts some doubt on his current reliability, trustworthiness, and good judgment.

Applicant says that he no longer engages in recreational activities where peer pressure to use drugs might exist, and the evidence indicates that he has been abstinent since at least December 2010. He did not submit a statement of intent to never abuse drugs in the future with automatic revocation for any violation, or otherwise demonstrate an intent not to abuse drugs in the future. These facts establish minimal mitigation under AG ¶ 26(b).

The drug abuse in this case did not involve prescription drugs, so AG ¶ 26(c) has no application to this decision. Applicant has not participated in any drug treatment program, and was never diagnosed with drug dependence or abuse, or recommended

for treatment. No favorable prognosis by a duly qualified medical professional was provided, so AG ¶ 26(d) does not 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 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 is a mature and accountable adult, who is responsible for his voluntary choices and conduct that underlie the security concerns expressed in the SOR.

Applicant's financial irresponsibility spans a decade, and continues at present. It involves delinquent debts still totaling more than \$27,000, not including the \$956 he owes toward a medical debt from 2008 that was not alleged in the SOR. He did not demonstrate that these debts arose under circumstances that were beyond his control, or that he initiated any budgetary changes to prevent additional financial difficulties. He offered no evidence of financial counseling, rehabilitation, or responsible conduct in other areas of his life. The potential for pressure, coercion, and duress remains undiminished.

From the evidence presented, Applicant's drug abuse was sporadic, socially recreational, and ended several years ago. However, it still reflects his disregard for the obligations imposed by laws, rules, and regulations. This concern is enhanced by the various and contradictory descriptions of its duration and frequency that he made while acknowledging his obligation to be truthful in connection with the investigation of his eligibility for a security clearance. This dissimulation reflects Applicant's concern that the conduct was serious, demonstrates an absence of rehabilitation, and evidences an ongoing potential for pressure or coercion.

Overall, the record evidence leaves me with 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 financial considerations or drug involvement.

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 F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.r:	Against Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraph 2.a:	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.

DAVID M. WHITE
Administrative Judge