



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



In the matter of:)	
)	
)	ISCR Case No. 11-09972
)	
Applicant for Security Clearance)	

Appearances

For Government: Philip J. Katauskas, Esq., Department Counsel
For Applicant: *Pro se*

11/27/2013

Decision

NOEL, Nichole L., Administrative Judge:

In addition to having ongoing, unresolved financial issues, Applicant has repeatedly lied to the Government about his history of drug involvement. Clearance is denied.

Statement of the Case

This case is Applicant’s reapplication for a security clearance. On October 26, 2009, a Defense Office of Hearings and Appeals (DOHA) Administrative Judge denied Applicant access to classified information after finding that he failed to mitigate the drug involvement and personal conduct allegations presented in a Statement of Reasons (SOR) dated March 31, 2009. Applicant submitted a security clearance application on August 15, 2011, again seeking access to classified information. He submitted a second security clearance application on April 20, 2012. The Department of Defense (DOD) issued a SOR on June 27, 2013, detailing security concerns under the personal conduct guideline and financial considerations guidelines.¹ DOD adjudicators were unable to find

¹ This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this

that it is clearly consistent with the national interest to grant or continue Applicant's security clearance and recommended that the case be submitted to an administrative judge for a determination whether to revoke or deny Applicant's security clearance.

Applicant answered the SOR and requested a decision without a hearing. Department Counsel submitted the Government's written case on September 19, 2013. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant did not respond to the FORM. Accordingly, the items appended to the FORM are admitted to the record as Government's Exhibits (GE) 1 through 10. The case was assigned to me on November 6, 2013.

Procedural Matters

Administrative Notice

On my own, I take judicial notice of the October 26, 2009 decision issued in ISCR Case No. 08-04283. In the Decision, the Administrative Judge made specific findings that are relevant and material to the current adjudication. The Decision is appended to the record as Hearing Exhibit I.

Findings of Fact

Applicant, 41, is a driver and general clerk for a federal contractor. Married since August 1997, Applicant and his wife are expecting their first child.²

Applicant first began using marijuana in 1991. He used the drug regularly until 1996. After three years of abstinence, Applicant resumed using marijuana in 1999, but only on what he deemed special occasions. In September 2006, Applicant submitted his first security clearance application. In response to the questions on the application about prior use or purchase of illegal drugs, Applicant denied any history of drug involvement. Initially, Applicant claimed that he answered the drug questions on the security clearance application in the negative because he was not using marijuana at the time he completed the form. Under cross-examination at the September 2009 hearing, Applicant admitted that he lied on the security clearance application. He also admitted that he continued to use marijuana after he submitted the security clearance application in September 2006 until January 2008. Despite his March 2007 arrest on possession of marijuana and distribution of controlled substance charges, which were subsequently nolle prossed, Applicant denied ever selling or distributing the drug. In denying Applicant access to classified information, the Administrative Judge concluded, in pertinent part, that Applicant intentionally falsified his security clearance application.³

case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

² GE 5; GE 4.

³ HE I.

In August 2011, Applicant reapplied for a security clearance. On the security clearance applications Applicant completed in August 2011 and April 2012, he disclosed prior drug use at New Year's Eve parties in 2007 and 2008.⁴ According to the summary of Applicant's interview with a background investigator:

[Applicant] smoked marijuana from January 2007 to January of 2008. [He] first tried it at a New Year's Eve party in 2007, and then smoked an unrecalled amount of times may [sic] three to four in a social setting with a group of friends that he no longer associates with. The last time [Applicant] smoked marijuana was at a New Year's Eve party in 2008.⁵

In his interrogatory responses adopting the interview summary, Applicant clarified that he first tried marijuana as a teenager, not in 2007. He further explained that he was never addicted to the drug, but only used it because the other kids he knew were using the drug. Applicant confirmed the 2007 and 2008 drug use, but claimed that he does not recall the details because it happened so long ago.⁶ In another set of responses to DOHA interrogatories about his history of drug use, Applicant stated that that he first used marijuana years ago, but did not remember the date. He admitted that he used the drug off and on, but not with great frequency, smoking approximately zero to three joints during a given year. He reiterated that his last use occurred around January 2008. He also stated that he did not intend to use drugs in the future.⁷

In response to the SOR allegations that he falsified his August 2011 and April 2012 security clearance applications as well as his February 2012 and July 2013 responses to DOHA interrogatories, Applicant qualifies his admissions stating:

When the very first top secret interview was performed, everyone around me said 'don't tell this or don't tell that', but I decided to speak the truth . . . I am sorry, but I do not sit and dwell on negative things from my past so dates are not always going to be remembered. The last investigator I talked with, I spoke to her about the current time, not years before. . . .

I admit I only answered that way because I can't recall specific dates. . . Nobody is that good to recall each and every situation in life verbatim [sic]. I answered the most recent memories I could recall. . . .

My answers to the July 2011 questionnaire were marked up and not thought through. It hurts. I didn't make the best decision in life all of the

⁴ GE 5-6.

⁵ GE 7.

⁶ GE 7.

⁷ GE 8.

time. However, I have not been in possession, or used, marijuana since 2008.⁸

In addition to the personal conduct concerns, the SOR also alleges that Applicant is indebted to seven creditors for approximately \$14,266.⁹ The largest debt, \$11,696 is for a car loan Applicant co-signed for his mother. Applicant attributes his delinquent debts to a decrease in his household income caused by a disability that prevents his wife from working. However, only one of the alleged accounts is for a medical expense. The majority of the delinquent accounts are for consumer goods. All of the debts alleged in the SOR remain unresolved. Applicant claims that his mother will rehabilitate the car loan and that he will pay the other delinquent debts in the future when he is able.¹⁰

Policies

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.

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.

⁸ GE 4.

⁹ Department Counsel concedes that SOR ¶ 1.c is a duplicate of ¶ 1.b. Therefore, I find in Applicant's favor on the debt alleged in ¶ 1.c.

¹⁰ GE 4.

Analysis

Personal Conduct

An applicant's lack of candor or dishonesty raises questions about his reliability, trustworthiness, and his ability to protect classified information. Of special interest in any adjudication is an applicant's failure to provide truthful and candid answers during the security clearance process.¹¹ Such is the case here. The SOR alleges that Applicant failed to fully disclose his illegal drug involvement on two security clearance applications and in response to two sets of interrogatories. When Applicant's statements in the two security clearance applications, his subject interview, and his two sets of interrogatory responses are compared to the findings in the October 2009 decision denying his access to classified information, it is clear that Applicant's history of drug involvement is much more extensive than he disclosed during the present adjudication.

In his qualified admissions to the SOR allegations, Applicant denies any intent to deceive the government, insisting that his disclosures were truthful. He attributes any omissions regarding his history of drug involvement to his faulty memory. An omission of relevant and material information is not deliberate if the person genuinely forgot about it or inadvertently overlooked it. Conversely, an omission is deliberate when it is made knowingly and willfully. I find that Applicant deliberately falsified his August 2011 and April 2012 security clearance applications and his February 2012 and July 2013 responses to DOHA interrogatories.¹²

It is not credible that Applicant could not remember the details of his drug history. Having previously been denied access to classified information because of his lack of candor about his drug history, Applicant knew the importance of full and candid disclosure during all phases of the adjudication process as well as the consequences of not doing so. Even if he could not recall the specifics of his drug history, the October 2009 decision provided sufficient detail to aid Applicant in providing full disclosure.

None of the personal conduct mitigating conditions apply. Applicant's falsifications are not minor. His inability to speak candidly about his drug history now spans two security clearance adjudications. He has demonstrated a pattern of dishonesty and lack of trustworthiness that continues to cast doubts on his ability to safely handle and protect classified information.

Financial Considerations

Unresolved delinquent debt is a security concern because "an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds."¹³ Applicant's \$14,266 in unresolved delinquent debt is enough to establish that

¹¹ AG ¶ 15.

¹² See AG ¶ 16(a).

¹³ AG ¶ 18.

he has a history of not paying his bills.¹⁴ None of the mitigating conditions apply. Applicant's financial problems are recent and ongoing. Although Applicant suggests that the financial problems were caused by events beyond his control there is not sufficient evidence in the record to support such a finding given Applicant's history of dishonesty with the Government and the absence of any corroborating evidence. Most important, Applicant has not taken any steps nor has he articulated a plan to resolve his outstanding delinquent debt.

The record leaves me with reservations about Appellant's current security worthiness. I also considered the nine-factor whole-person concept.¹⁵ Applicant's pattern of dishonesty and his recent, unresolved financial problems are strong indicators that he is not a suitable candidate for access to classified information. Clearance is denied.

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, Personal Conduct:	AGAINST APPLICANT
Subparagraphs 1.a - 1.d:	Against Applicant
Paragraph 2, Financial Considerations:	AGAINST APPLICANT
Subparagraphs 2.a - 2.b, 2.d - 2.h:	Against Applicant
Subparagraph 2.c.:	For Applicant

Conclusion

In light of all of the circumstances, 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.

Nichole L. Noel
Administrative Judge

¹⁴ AG ¶¶ 19(a) and (c).

¹⁵ AG ¶ 2(a).