



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



In the matter of:)
)
) ISCR Case No. 11-10958
)
Applicant for Security Clearance)

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

09/20/2013

Decision

DUFFY, James F., Administrative Judge:

Applicant mitigated the security concerns arising under Guideline E (Personal Conduct) and Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

Statement of the Case

On May 3, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines E and F. This 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 on September 1, 2006.

On May 31st and June 7th, 14th, 19th, and 20th of 2013, Applicant answered the SOR and, in doing so, requested a hearing. The case was assigned to me on August 8, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 4, 2013, and the hearing was convened as scheduled on September 9,

2013. At the hearing, Department Counsel offered Government's Exhibits (GE) 1 through 5, which were admitted into evidence without objection. Applicant testified, offered no exhibits, and called no witnesses. The record was left open until September 16, 2013, to provide Applicant an opportunity to submit additional matters. He timely submitted documents that were marked as Applicant's Exhibits (AE) A and B and admitted into evidence without objection. Department Counsel's memorandum forwarding Applicant's post-hearing submission was marked as Hearing Exhibit (HE) 1. DOHA received the hearing transcript (Tr.) on September 16, 2013.

Procedural Matters

At the hearing, Applicant affirmatively waived the 15-day notice requirement in Paragraph E3.1.8 of the Directive.¹

Findings of Fact

Applicant is a 28-year-old prospective security officer of a defense contractor. Since about March 2011, he has been working as a guard for a company that transports prisoners. He also has a part-time job with a private security company. He graduated from high school in 2004 and has been attending college since June 2010. He served on active duty in the U.S. Army from January 2006 to October 2007 and received a medical retirement. He married in January 2007 and divorced in March 2008. He has no children. This is the first time that he has sought a security clearance.²

The SOR listed 21 allegations under Guideline E. Of those allegations, 15 were for traffic-related charges; two alleged that restraining orders were issued against him; two were for failures to appear in court for traffic-related charges; one was for leaving a job under unfavorable circumstances following a traffic accident; and one was for desertion in the military following an unauthorized absence from April to May 2006. Under Guideline F, the SOR alleged that Applicant was granted a Chapter 7 bankruptcy discharge in December 2010 and, since then, had two delinquent debts, totaling \$1,077. In his Answer to the SOR, Applicant admitted 18 of the Guideline E allegations and denied the remaining three allegations. He admitted the bankruptcy allegation under Guideline F, but neither admitted nor denied the two delinquent debts.³

Personal Conduct

Applicant admitted all of the traffic-related allegations. He was charged and found guilty of speeding on six occasions, *i.e.*, January 2004, February 2004, August 2004, November 2009, October 2010, and April 2012. Most of them involved traveling at about

¹ Tr. at 12-13.

² Tr. at 6-8, 47, 50; GE1.

³ Applicant's Answer to the SOR. In his Answer, Applicant indicated that he agreed with certain allegations. At the hearing, he indicated that by using the term "agree," he meant "admit." See Tr. at 25.

ten miles per hour over the speed limit. He was also charged and found guilty of failure to yield while making a turn in May 2004, failure to carry a registration card in his vehicle in December 2004, negligent driving in February 2005, driving a motor vehicle without a valid medical certificate in May 2010, and failure to apply for a duplicate license when his license was mutilated in September 2010. Various traffic-related charges were dismissed against him, *i.e.*, February 2005 (speeding), November 2005 (reckless driving, negligent driving, speeding, and driving on suspended license), September 2009 (driving unauthorized class vehicle and speeding), and September 2010 (speeding). In about 2005, he had his driver's license suspended for a period because of his multiple traffic-related offenses.⁴

Applicant also admitted that he was charged with failure to appear in court for speeding offenses in January 2005 and July 2012. The January 2005 failure-to-appear charge was later dismissed. The July 2012 failure-to-appear charge resulted in his driver's license being suspended. His driver's license was later reinstated when he paid a fine.⁵

Of the two restraining order allegations, Applicant admitted such an order was issued against him in December 2004. At that time, he was 19 years old. The order prohibited him from having contact with a former girlfriend. He indicated this order arose because his former girlfriend's mother did not want him coming to her house. He denied the other allegation that stated he was issued a restraining order in December 2007. He claimed the second allegation was a mistake or duplicate of the first allegation. No police records or court documents in the record reflected that a restraining order was issued against him in December 2007.⁶

Applicant denied that he left a job under unfavorable circumstances in October 2008 following a motor vehicle accident. In his Electronic Questionnaire for Investigations Processing (e-QIP) dated November 2, 2010, he stated that he left that job because of a motor vehicle accident and the "owners became iffy with the deliveries." Under Section 13C of his e-QIP, he did not indicate that he left that job under unfavorable circumstances. In an Office of Personnel Management interview on July 8, 2011, he stated that he received a letter from the company advising him that he could return to work following the accident, but decided he would leave that job. In his Answer to the SOR, he indicated that he left that job after giving the proper two-week notice following the accident. At the hearing, he testified that the accident occurred when a woman ran a red light and hit his vehicle as he was making a turn. After being

⁴ Tr. at 4, 36-40; Applicant's Answer to the SOR; GE 2, 5.

⁵ Tr. at 4, 63-65; Applicant's Answer to the SOR; GE 5.

⁶ Tr. at 26-27, 43-44; GE 2. Applicant testified the restraining order, which was called a "peace order," was issued in 2005. In GE 2, Applicant responded 'Yes' to a question that asked whether a restraining order was issued against him in December 2007. The basis for that question is unknown and Applicant apparently confused that question with the December 2004 restraining order.

hit, his vehicle spun around and struck another vehicle. No documents from the former employer were provided to establish he left that job under unfavorable circumstances.⁷

Applicant admitted that he absented himself from boot camp without authorization from April to May 2006 because he was required to perform tasks after injuring his foot and because his grandmother passed away. He stated that, after realizing the stupidity of his decision, he voluntarily returned to military control. No disciplinary action was taken against him. He was given the option of either restarting boot camp or receiving a discharge. He chose to remain in the Army and successfully completed boot camp. He was later medically discharged due to a training-related injury. He receives Veterans Affairs disability payments.⁸

Applicant testified that he has matured, that he has learned his lesson about driving irresponsibility, and that such behavior will not happen again. In his current job transporting prisoners, he is required to maintain a commercial driver's license (CDL) and carries a handgun. His company conducted a background check on him to determine whether he met the insurance criteria for a CDL. He drives cars, vans, and buses to transport prisoners. This job is contingent on him maintaining a clean driver's license. He testified that he currently has no points against his driver's license. He also testified that he was stopped in May 2013 by the police for not wearing a seat belt as he pulled out of a repair shop in his private vehicle. He paid a \$144 fine for that infraction and received no points against his driver's license.⁹

Financial Considerations

Applicant experienced several periods of unemployment. Specifically, he was unemployed from September 2003 to January 2004, November 2005 to January 2006, October 2007 to February 2008, October 2008 to June 2009, February 2010 to March 2010, and October 2010 to March 2011. He filed Chapter 7 bankruptcy in August 2010. When he filed bankruptcy, he had \$1,375 in assets and \$39,000 in liabilities. In December 2010, his debts were discharged in that proceeding. He attributed his need to file bankruptcy to his divorce and periods of unemployment.¹⁰

SOR ¶ 2.b alleged that Applicant had a charged-off account in the amount of \$655. In his Answer to the SOR and at the hearing, he stated that he paid this debt. In his post-hearing submission, Applicant provided a document from the creditor indicating that he made a payment of \$168 in June 2013, which completed his settlement agreement. This debt is resolved.¹¹

⁷ Tr. at 27-30; GE 2.

⁸ Tr. at 30-36; GE 2.

⁹ Tr. at 60-70.

¹⁰ Tr. at 40-47, 61-62; GE 1, 2, 3.

¹¹ Tr. at 57-59; GE 3, AE A, B.

SOR ¶ 2.c alleged that Applicant had an account placed for collection in the amount of \$422. In his Answer to the SOR, he claimed that he was not aware of this debt. At the hearing, he stated that he contacted the creditor to set up a repayment plan. He, however, provided no documentation concerning this debt. It is considered unresolved.¹²

Applicant received financial counseling when he filed for bankruptcy. In his OPM interview of June 20, 2011, he indicated that he had a net monthly remainder (net monthly income minus monthly expenses and debt payments) of \$1,627. He stated that he was paying all of his bills on time.¹³

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 that 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.

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 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

¹² Tr. at 59-60; GE 3.

¹³ GE 2.

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 about 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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline E, Personal Conduct

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

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

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available evidence information 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. This includes but is not limited to consideration of: (1) untrustworthy or unreliable behavior . . . [and] (3) a pattern of . . . rule violations . . .

From 2004 to 2012, Applicant was charged with 15 traffic-related offenses. He was convicted of 11 of those offenses. He was twice charged with failure to appear in court for speeding offenses; one of those failure-to-appear offenses was dismissed and the other resulted in a fine. At age 19 in 2004, he was issued a restraining order prohibiting him to have contact with a former girlfriend. While in the Army, he absented himself from boot camp without authorization for approximately one month. This evidence is sufficient to raise both of the above disqualifying conditions.

Insufficient evidence was presented to substantiate the allegations in SOR ¶¶ 1.i (asserting that he had a restraining order was issued against him in December 2007) and 1.j (asserting that he left a job under unfavorable circumstances in October 2008 following a traffic accident). I find in favor of Applicant on those allegations.

AG ¶ 17 lists two personal conduct mitigating conditions that 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; and

(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.

Applicant's one-month unauthorized absence from boot camp happened over seven years ago. He was not punished for that offense. He was provided with the option of receiving an administrative discharge or restarting boot camp. He chose the latter option and successfully completed boot camp. Such misconduct does not cast doubt on his current reliability and good judgment. AG ¶ 17(c) applies to SOR ¶ 1.k.

Applicant's other misconduct, while not trivial, is not egregious. It is unknown whether any of his traffic-related offenses constituted criminal offenses (e.g., misdemeanors) or were merely infractions. If examined individually, none of Applicant's charges appear to raise significant security concerns. The most troubling aspect of this case is the number of his offenses and his apparent disregard for the law. In this analysis, I have considered Applicant's conduct as a whole and not in a piecemeal manner.

More than a year has passed since Applicant was charged with speeding. He has acknowledged that he made mistakes. At the hearing, he testified that he has matured and will drive in a more responsible manner in the future. He stated that he currently has no points against his driver's license. He must maintain a CDL for his job involving the transportation of prisoners and must have a clean driving record to retain that license. He now understands the potential adverse consequences of his previous irresponsible behavior and that he must avoid engaging in conduct that reflects

negatively on his reliability and good judgment. His inappropriate behavior is unlikely to recur. AG ¶ 17(d) applies and ¶ 17(c) partially applies.

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18 as follows:

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 was granted a Chapter 7 bankruptcy discharge in 2010 and, since then, accumulated two delinquent debts. This evidence is sufficient to raise the above disqualifying conditions.

Several financial considerations mitigating conditions under AG ¶ 20 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 experienced a number of periods of unemployment and a divorce. Those were conditions beyond his control that contributed to his financial problems. In 2010, he filed Chapter 7 bankruptcy and received a discharge of his debts. Since his bankruptcy, he incurred two relatively small delinquent debts. He has paid one of those debts, He indicated that he will contact the creditor to establish a repayment plan for the other debt, but provided no proof of those efforts. This debt amounted to \$422 and does not raise a security concern. Applicant received financial counseling before filing bankruptcy. He lives within his means. His financial problems are under control and are being resolved. Given his unresolved debt, AG ¶ 20(a) does not apply. AG ¶ 20(c) applies and ¶¶ 20(b) and 20(d) partially apply. AG ¶ 20(e) does not apply because Applicant has not disputed the past-due debts.

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 relevant facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant served in the Army. He was open and forthcoming during the hearing. He has acknowledged that he has made mistakes and understands that he must avoid engaging in conduct that raises questions about his reliability and good judgment. He is unlikely to engage in questionable conduct in the future.

Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns under the personal conduct and financial considerations 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:

Paragraph 1, Guideline E:	FOR APPLICANT
Subparagraphs 1.a – 1.u:	For Applicant
Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraphs 2.a – 2.c:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

James F. Duffy
Administrative Judge