

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



In the matter of:)
)
) ISCR Case: 11-12751
)
Applicant for Security Clearance)

Appearances

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

12/07/2012

Decision

DAM, Shari, Administrative Judge:

Applicant submitted a security clearance application on June 15, 2011. (Item 4.) On August 22, 2012, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline H (Drug Involvement) Guideline E (Personal Conduct), and Guideline F (Financial Considerations). (Item 3.) 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 (AG) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on September 4, 2012, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 3.) Department Counsel submitted the Government's written case on October 5, 2012. A complete copy of the File of Relevant Material (FORM), containing seven Items, 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 October 12, 2012, and returned it to DOHA. He timely submitted a letter that I marked as Applicant Exhibit (AE) A and admitted into the record without objection from Department Counsel. I received the case assignment on November 26, 2012.

Findings of Fact

Applicant is a 29-year-old employee of a defense contractor, where he was hired in June 2010. During the preceding six months, he was unemployed. Before that he worked in private industry from February 2009 until November 2009. From March 2005 until January 2009, he worked for a different defense contractor. He is married, with two young children. (Item 4.) Applicant experienced financial difficulties that he attributed to six months of unemployment in 2009 and his wife's year of unemployment between 2008 and 2009. (Item 5 at 2.)

Applicant served on active duty with the Navy from August 2001 to August 2004, when he was administratively separated from the Navy with an Other Than Honorable discharge after testing positive for marijuana during a drug screening. (Item 4.) In his response to the SOR, he admitted both allegations pertaining to that incident in Paragraph 1 of the SOR, alleged under Guideline H (Drug Involvement.) He explained that he used marijuana, one time, while attending a party in the Navy and acknowledged that he held a security clearance at the time. In an interview in July 2011, he denied that he used marijuana after the May 2004 incident, leading to his service termination, or that he needed treatment for substance abuse. (Item 5 at 4.) There are no other allegations of illegal drug abuse in the file.

Applicant admitted both allegations in Paragraph 2 of the SOR, alleged under Guideline E (Personal Conduct), regarding his failure to disclose in his June 2011 security clearance application his illegal use of marijuana and delinquent debts. During the July 2011 interview, he said he made an error by not disclosing the marijuana incident when completing his application. (Item 5 at 4.) During the same interview, he asserted he did not disclose them because he did not have any pertinent information with him when he completed the application. He told the investigator that he knew the government could locate the information. He also admitted that he did not disclose the delinquent debts because he was embarrassed. (Item 5 at 3.)

Applicant admitted owing the 24 delinquent debts alleged in Paragraph 3 of the SOR, under Guideline F (Financial Considerations.) The debts totaled over \$35,000, and accumulated between 2008 and 2011. (Items 1, 6.) Although he told the investigator that he was making payments on some debts, he did not submit evidence to document his actions. He said he did not have enough money to pay his debts. (Item 5.)

Applicant's admissions, including his responses to DOHA interrogatories, are incorporated in the following findings. (Item 5.) He provided some evidence of unusual circumstances or conditions beyond his control that may have given rise to certain debts. He offered no evidence of counseling or budget planning from which to conclude that he has either the willingness or the means to resolve them, or to avoid incurring additional delinquencies going forward.

Applicant submitted a letter in which he expressed remorse over his conduct and dedication to his family and country. (AE A.) He 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 or other independent evidence tending to establish good judgment, trustworthiness, 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 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, 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 on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Pursuant to 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 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; and

(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 three conditions that could raise a security concern and may be disqualifying in this case:

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

(b) testing positive for illegal drug use; and

(g) any illegal drug use after being granted a security clearance.

Applicant admitted that he illegally used marijuana in May 2004 while in the Navy and holding a security clearance. The evidence establishes the application of the above three disqualifying conditions.

After the evidence raises security concerns, the burden to rebut, extenuate, or mitigate those concerns shifts to the Applicant. AG ¶ 26 provides two conditions that could mitigate security concerns under this guideline:

- (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:
 - (3) an appropriate period of abstinence.

Applicant illegally used marijuana in May 2004, over eight years ago. There is no evidence that he has used it or other illegal drugs since then, demonstrating his intent not to abuse drugs. Both of the above mitigating conditions apply.

Guideline E, Personal Conduct

The security concern pertaining to the guideline 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.

The Government alleged in ¶¶ 2.a and 2.b of the SOR that Applicant falsified answers to questions related to his prior drug involvement and delinquent debts. Those omissions may raise a security concern and be disqualifying 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.

Applicant admitted that he omitted information about his illegal marijuana use that led to his administrative separation from the Navy. He claimed he made an error when he completed the application and failed to include it. He offered no persuasive evidence to corroborate his explanation. He admitted that he intentionally failed to disclose delinquent debts because he was embarrassed. The evidence supports the application of the above enumerated disqualifying condition.

AG ¶ 17 includes six conditions that could mitigate security concerns arising under this guideline:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (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;
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and
- (g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

The evidence does not support the application of any of the above mitigating conditions to the security concerns raised under this guideline. AG ¶ 17(a) does not apply because Applicant did not voluntarily report his omission. His failure to disclose requested information was not related to inadequate advice of authorized personnel; hence, AG ¶ 17(b) has no application. Applicant's intentional non-disclosure of information requested in two different sections of the security clearance application occurred less than two years ago, was intentional, and cannot be considered to be a minor offense. AG ¶ 17(c) does not apply. There is no evidence to support the application of AG ¶¶ 17(d), (e) and (f).

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are 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.

AG ¶ 19 describes two conditions that could raise a security concern and may be disqualifying in this case:

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

Applicant has been unable or unwilling to satisfy numerous debts since 2008, totaling over \$35,000. The evidence established both AG ¶¶ 19(a) and (c).

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 delinquent debts, in excess of \$35,000, became delinquent between 2008 and 2011, and continue to be unpaid or unresolved to-date. Applicant failed to demonstrate that such problems are unlikely to continue or recur, or that his reliability and trustworthiness have improved. The evidence does not support the application of AG ¶ 20(a).

AG ¶ 20(b) has partial application. Applicant and his wife experienced a period of unemployment between 2008 and 2011 that contributed to his financial delinquencies. Those were circumstances beyond his control. However, evidence that he attempted to responsibly manage his debts while they were accumulating is necessary for the full application of this mitigating condition. He did not present any evidence supporting that prong of this condition. AG ¶ 20(c) does not apply either. Applicant did not undergo financial counseling, and he offered no evidence to establish clear indications that the problem is being resolved or is under control.

Applicant claimed to have paid some of the delinquent debts but offered no evidence to corroborate any payment to any of the SOR-listed creditors. Nor did he submit evidence of any arrangements to repay or otherwise resolve any of those debts. No mitigation under AG ¶ 20(d) was proven. Applicant admitted owing all of the debts and did not provide any evidence that he took any action to dispute debts, as required under AG ¶ 20(e).

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 an adult, who is responsible for his voluntary choices and conduct that underlie the security concerns expressed in the SOR. His financial problem spans the past four years or more, and

continues at present. It involves substantial debts owed to 24 different creditors totaling more than \$35,000, with no indication that the problems are being resolved. He demonstrated neither the means nor the willingness to fulfill his legal obligations to these creditors. His decision to withhold requested information from his security clearance application is a significant concern. He offered insufficient evidence of rehabilitation or of responsible actions to mitigate his financial issues or personal conduct. The potential for pressure, coercion, and duress remains undiminished. He mitigated the drug involvement security concern based on the passage of time without evidence of another offense. Overall, the record evidence leaves me with substantial doubt as to Applicant's present eligibility and suitability for a security clearance.

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 H:	FOR APPLICANT
Subparagraphs 1.a and 1.b:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a and 2.b:	Against Applicant
Paragraph 3, Guideline F:	AGAINST APPLICANT
Subparagraphs 3.a through 3.x:	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.

SHARI DAM
Administrative Judge