



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



In the matter of:)
)
) ISCR Case No. 12-02028
)
Applicant for Security Clearance)

Appearances

For Government: Richard Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

07/09/2013

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings and exhibits, Applicant’s eligibility for access to classified information is denied.

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on November 17, 2011. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on September 6, 2012, detailing security concerns under Guideline E, personal conduct, Guideline F, financial considerations, Guideline G, alcohol consumption, and Guideline H, drug involvement. 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 For Determining Eligibility for Access to Classified Information* (AG) implemented on September 1, 2006.

Applicant received the SOR on September 26, 2012. He submitted a notarized, written response to the SOR allegations dated October 11, 2012, and requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a file of relevant material (FORM) and mailed Applicant a complete copy on March 29, 2013. Applicant received the FORM on May 16, 2013. He had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He did not submit a response. DOHA assigned this case to me on June 25, 2013. The Government submitted ten exhibits, which have been marked as Items 1-10 and admitted into the record. Applicant's response to the SOR has been marked and admitted as Item 4, and the SOR has been marked as Item 1.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a - 1.e, 2.a - 2.c, and 4.a - 4.f of the SOR. He admitted the factual allegation in SOR ¶ 4.g with explanation. In his answers to the SOR, he neither admitted nor denied the factual allegation about using drugs after being granted a security clearance in SOR ¶ 3.a, but he admitted the allegation in his written response. His admissions are incorporated herein as findings of fact. He also provided an additional statement to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 35 years old, works as a field representative for a DOD contractor. He began this employment in June 2011. He previously worked as a mechanic, an operator, a maintenance engineer, and a business owner from 2006 until 2010. He experienced periods of unemployment from November 2002 until April 2003, November 2004 until July 2005, and October 2005 and January 2006.¹

Applicant and his wife married in 2004. They have a daughter, age 8 and a son, age 7. He also has a 15-year-old daughter for whom he pays child support. Applicant graduated from high school and attended community college. He has not received any degrees.²

Applicant enlisted in the military at age 21 in 1999 and served on active duty from May 1999 until February 2002. He failed a drug screening test around November 2001, which resulted in his discharge from the military under "other than honorable conditions" after a Uniform Code of Military Judgment (UCMJ) non-judicial punishment (NJP) proceeding. He admitted in his Answer he used cocaine at least twice while in the military. Applicant denies any additional use of illegal drugs, and the record lacks any evidence of further drug use. He stopped his drug use after his NJP and discharge

¹Item 6;

²*Id.*

because he realized the consequences to him for drug use. He acknowledged a previous DOD security clearance investigation and holding a security clearance in response to question 25 on his e-QIP, but did not know the dates. In question 23 on his e-QIP, he, however, denied ever illegally being involved with a drug or controlled substance while holding a security clearance. The record contains no evidence that he held a security clearance while in the military.³

Applicant admits to alcohol consumption to excess and to the point of intoxication since age 18. His alcohol consumption resulted in arrests for public intoxication in 1998, 2003, and 2009. The police also arrested him for driving under the influence (DUI) in February 2002. The court found him guilty and fined him \$500. This is the only DUI arrest of record. Applicant advised that he stopped consuming alcohol after the 2009 incident. He has not provided any evidence, such as corroborating statements, of his change in behavior.⁴

In July 2010, the police stopped Applicant while driving. They cited him for driving on a suspended license, no proof of liability insurance, and expired motor vehicle inspection. He did not appear for his court hearing, and a bench warrant was issued. The status of the bench warrant is unknown. The police again stopped Applicant while driving and cited him for driving on a suspended license and no proof of liability insurance in February 2011. He appeared for his court hearing, and the court found him guilty of driving on a suspended license. The court sentenced him to 48 hours in jail, which was suspended, and fined him \$355. He paid the fine, and the charge was dismissed.⁵

When he was unemployed or operating his own business in the past, Applicant could not pay his child support, which created an arrearage. His non-payment resulted in the suspension of his driver's license. He pays his child support and is slowly working to reduce the arrearage. His child support payments are currently being paid through payroll deduction and are not alleged in the SOR.⁶

The SOR identified one judgment for \$2,629 and six debts totaling \$1,860. He indicated that he paid the \$466 debt in SOR ¶ 1.g. He did not provide proof of this payment. He advised that he was working on resolving his debts. He also did not provide proof of payment of any other debts, although the December 14, 2011 credit report reflects that he paid one collection debt not listed in the SOR. Applicant has not

³*Id.*

⁴*Id.*; Item 4.

⁵*Id.*; Item 7.

⁶Item 1; Item 4; Item 6; Item 8; Item 9.

prepared and submitted a budget showing his monthly income and expenses, nor has he indicated that he received financial counseling.⁷

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 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 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, an applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." An applicant has the ultimate burden of persuasion for obtaining 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 an 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.

⁷Item 1; Item 4; Item 6; Item 9; Item 10.

Section 7 of Executive Order 10865 provides that 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 G, Alcohol Consumption

AG ¶ 21 expresses the security concern pertaining to alcohol consumption, “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.”

AG ¶ 22 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

(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.

During an 11-year period of time, the police arrested Applicant three times for public intoxication and once for DUI. Since the age of 18, he drank to excess and to the point of intoxication at times. These disqualifying conditions apply.

The Alcohol Consumption guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 23(a) through ¶ 23(f), and 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).

Other than his statement that he is no longer consumes alcohol, Applicant has not provided any documentation about his drinking habits in the last four years. He has

not been arrested for alcohol-related behavior in the last four years, which provides some support for his statement. However, nearly six years elapsed between his alcohol-related arrest in 2003 and his alcohol-related arrest in 2009. Applicant is entitled to some mitigation, but he has not fully mitigated the security concerns about his alcohol consumption.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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 the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following 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 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 to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information:

(2) disruptive, violent, or other inappropriate behavior in the workplace;

(3) a pattern of dishonesty or rule violations; and,

(4) evidence of significant misuse of Government or other employer's time or resources.

Applicant violated the rules when he used cocaine as a serviceman, which resulted in an other than honorable discharge. He also violated the laws when he drove his car without a valid drivers' license, proof of liability insurance, and on an expired inspection sticker. Applicant provided conflicting information on his e-QIP about whether he held a security clearance while in the military. The record has no evidence of drug use while holding a security clearance. However, Applicant admitted to using drugs while holding a security clearance in his response to the SOR. A security concern under AG ¶¶ 16(c) and 16(d)(3) is established.

The Personal Conduct guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 17(a) through ¶ 17(g), and 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's other than honorable discharge from the military occurred more than 11 years ago. The record contains no other evidence of negative employment performance. Applicant understands that driving on a suspended driver's license is unacceptable. He no longer uses drugs. He has changed his behavior and has reduced and eliminated his vulnerability to exploitation, manipulation, or duress. There is little likelihood that this behavior will occur again. Guideline E security concerns are mitigated.

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 the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

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

(b) testing positive for illegal drug use;

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

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

Applicant used cocaine twice while in the military. His use was discovered when he failed a drug test.. He admitted in his Answer to using drugs while holding a security clearance. To use cocaine, an illegal drug, he possessed it. A security concern is raised under the above guidelines.

The Drug Involvement guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 26(a) through ¶ 26(d), and 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; and,

(4) a signed statement of intent with automatic revocation of clearance for any violation.

Applicant used cocaine more than twelve years ago. His punishment and subsequent dismissal from the military made him realize the consequences of using drugs. He decided not to use drugs in the future and remain abstinent. The record contains no evidence of any drug use after 2001. As for using cocaine while holding a security clearance, Applicant violated a trust given to him. In completing his e-QIP, Applicant revealed many negative incidents, all of which are listed in the SOR. By revealing this information, Applicant showed his honesty and good judgment. As he has matured, he has taken responsibility for his past conduct. He has mitigated the security concerns about his drug involvement.

Guideline F, Financial Considerations

The security concern relating to the guideline 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.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

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

Appellant developed financial problems during the years he was unemployed and operating his business. Most of the debts have not been resolved. These two disqualifying conditions apply.

The Financial Considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through ¶ 20(f), and the following are potentially applicable:

- (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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Unemployment and limited business income because of a slow economy are circumstances beyond Applicant's control. The record lacks evidence which shows that Applicant developed a plan to pay his debts or that he paid his debts. Specifically, he failed to provide a copy of the cancelled check, a receipt, or a bank statement reflecting payment of the debt in SOR allegation 4.g or his other debts. These documents could have indicated that his debts were resolved and that he had made a good-faith effort to resolve his debts. This mitigating had limited applicability.

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 an 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant has matured. He no longer uses drugs and does not intend to do so in the future. He has not provided sufficient evidence to show that he is no longer consuming alcohol or

that he has taken action to resolve his debts. He needs additional time to show that he has mitigated the security concerns about his alcohol use and finances. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his finances and alcohol consumption.

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 G:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Paragraph 3, Guideline H:	FOR APPLICANT
Subparagraph 3.a:	For Applicant
Paragraph 4, Guideline F:	AGAINST APPLICANT
Subparagraph 4.a:	Against Applicant
Subparagraph 4.b:	Against Applicant
Subparagraph 4.c:	Against Applicant
Subparagraph 4.d:	Against Applicant
Subparagraph 4.e:	Against Applicant
Subparagraph 4.f:	Against Applicant
Subparagraph 4.g:	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.

MARY E. HENRY
Administrative Judge