



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



In the matter of:

)

)

)

ISCR Case No. 12-06429

)

Applicant for Security Clearance

)

Appearances

For Government: David F. Hayes, Esq., Department Counsel

For Applicant: *Pro se*

06/28/2016

Decision

CURRY, Marc E., Administrative Judge:

The criminal conduct concerns were mitigated by the amount of time that has elapsed since the last offense. Applicant's omission of a 33-year old criminal offense from his security clearance application does not constitute a falsification, therefore there are no personal conduct security concerns. Conversely, Applicant failed to substantiate his contention that his delinquencies either have been paid, or are being paid through payment plans. Consequently, financial considerations security concerns remain. Clearance is denied.

Statement of the Case

On December 11, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline J, criminal conduct, Guideline F, financial considerations, and Guideline E, personal conduct. 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 DOD on

September 1, 2006. On January 17, 2015, Applicant answered the SOR, admitting subparagraphs 1.a, 1.d, 1.e, and 1.g, and denying Paragraph 3. As for Paragraph 2, the allegations related to the financial considerations guideline, he neither admitted nor denied them. Instead, he stated that each debt was either satisfied or in the process of being satisfied. I have construed this answer as a denial. Applicant requested a decision without a hearing.

On May 14, 2015, Department Counsel prepared a File of Relevant Materials (FORM). Applicant was provided a copy of the FORM on June 3, 2015, and was instructed that he had 30 days to file any objections to this information, or to supply additional information. Applicant did not file a response. On March 3, 2016, the case was assigned to me.

Findings of Fact

Applicant is a 57-year-old single man with two adult children, ages 39 and 30. He was married previously from 1985 to his divorce in 2006. Applicant's oldest child is from a relationship that pre-dated his marriage. (Item 2 at 13) Applicant has a high school education. (Item 3 at 1) He has worked as a federal contractor since 2011.

On September 22, 1983, Applicant was charged with the possession, manufacture, distribution, or sale of marijuana. On or about July 20, 1993, Applicant was charged with battery of a person without injury. On February 7, 2000, Applicant was charged with grand theft, and petty theft with prior conviction. The outcome of these three charges is unknown from the record. In May of 2011, Applicant was charged with using profanity and being intoxicated while in public. He was fined \$25 and ordered to pay \$80 in court fees. (Item 2 at 30) On May 21, 2012, Applicant was charged with being drunk in public. He was found guilty and fined.

The SOR alleges three additional charges, as set forth in subparagraphs 1.b, 1.c, and 1.f. The Government provided no substantiating documentation.

Applicant has approximately \$40,000 of delinquent debt. Approximately \$35,000 of this debt constitutes back child support payments (SOR subparagraph 1.f). Three delinquencies, totaling approximately \$3,000, constitute judgments for delinquent rental payments incurred between July 2010 and February 2012 (subparagraphs 1.a through 1.c). Subparagraphs 1.d and 1.e, totaling approximately \$1,800, are a tax lien and a medical bill, respectively.

Applicant attributes his financial problems to two lengthy unemployment periods following layoffs. The first period of unemployment lasted from May 2006 to June 2007, and the second period of unemployment lasted from June 2010 to May 2011. (Item 2 at 32; Item 3 at 1) His financial problems following the first period of unemployment were exacerbated by a costly divorce. (Item 3 at 4) Applicant contends that he has satisfied the debts alleged in subparagraphs 1.a through 1.d, and is making payments towards the satisfaction of subparagraphs 1.e and 1.f. He provided no corroborating evidence.

Applicant completed a security clearance application in January 2012. In response to the question, “[h]ave you EVER been charged with an offense involving alcohol or drugs?” he failed to disclose the 1983 marijuana arrest. Applicant contends that he misread the question, thinking that he was only supposed to list criminal activity that occurred within ten years of completing the application. (Item 1 at 2) Elsewhere on the security clearance application, he disclosed the criminal charges from 2011 and 2012. (Item 2 at 29-30) He also disclosed all of his derogatory financial information, as required, on the security clearance application. (Item 2 at 36-37)

Policies

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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.”

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 applicant or proven by department counsel. . . .” The applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

Analysis

Guideline J, Criminal Conduct

Under this guideline, “criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness.” Moreover, “by its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.” (AG ¶ 30)

There is no record evidence supporting the allegations set forth in SOR subparagraphs 1.b, 1.c, and 1.f. In light of Applicant’s denials, I resolve these allegations in his favor. The remainder of the criminal conduct allegations, which he has admitted, triggers the application of AG ¶ 31(a) “. . . multiple lesser offenses.” Applicant’s most recent crime occurred four years ago. His three remaining criminal offenses occurred 15 to 30 years ago. Considering the infrequency of the offenses and the amount of time that has elapsed since the last offense, I conclude that AG ¶ 32(a), “so much time has elapsed since the criminal behavior happened . . . that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good

judgment,” and AG ¶ 32(d), “there is evidence of successful rehabilitation including . . . passage of time without recurrence of criminal activity,” apply.

Guideline F, Financial Considerations

Under this guideline, “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.” (AG ¶ 18) Applicant’s history of financial problems triggers the application of AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.”

The following mitigating conditions under AG ¶ 20 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 debt.

Applicant’s financial problems stem from two lengthy periods of unemployment, the first of which coincided with a costly divorce. Applicant contends that he has either satisfied his delinquencies entirely, or is in the process of satisfying them through payment plans. However, he provided no substantiating documentary evidence. Under these circumstances, AG ¶ 20(b) is partially applicable, to the extent that his financial problems were out of his control, but none of the remaining mitigating conditions apply.

Guideline E, Personal Conduct

Under this guideline, “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.” (AG ¶ 15) Moreover, “of special interest is any failure to provide truthful and candid answers during the security clearance process . . .” (*Id.*)

Given that Applicant disclosed other derogatory information that was responsive to the questions on his security clearance application, I conclude that his explanation for the omission of the 1983 drug arrest was credible. There are no personal conduct security concerns.

Whole-Person Concept

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They are as follows:

(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.

Although Applicant has a history of criminal conduct, only two of his criminal offenses have occurred within the past 15 years, and the most recent episode occurred more than four years ago. Both of the most recent criminal offenses were minor, resulting in fines. Under these circumstances, Applicant mitigated the criminal conduct security concern. Conversely, Applicant addressed the mitigating circumstances surrounding his financial problems, but failed to substantiate the steps that he has taken to alleviate them. Under these circumstances, he has not mitigated the financial considerations security concern.

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 J:	FOR APPLICANT
Subparagraphs 1.a-1.g:	For Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraphs 2.a - 2.f:	Against Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraphs 3.a - 3.b:	For 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.

MARC E. CURRY
Administrative Judge