



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 14-06136
)	
Applicant for Security Clearance)	

Appearances

For Government: Bryan J. Olmos, Esq., Department Counsel
For Applicant: *Pro se*

11/08/2016

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant did not mitigate security concerns raised by his delinquent debts and illegal drug use. He failed to show that he has taken sufficient steps to address his past-due debts and mitigate concerns raised by his financial situation. He also failed to demonstrate that his marijuana use from about 1998 to 2014, which recently overlapped with his employment as a federal contractor, is unlikely to recur. Clearance is denied.

Statement of the Case

On January 26, 2015, the Department of Defense (DOD) sent Applicant a Statement of Reasons (SOR) alleging that his past conduct and current circumstances raised security concerns under the financial considerations and drug involvement guidelines.¹ On June 9, 2015, Applicant answered the SOR and requested a decision based on the administrative (written) record. Subsequently, Department Counsel amended the SOR, adding SOR 1.b through 1.e. Applicant did not raise an objection to

¹ This action was taken under Executive Order (E.O.) 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 implemented by the Department of Defense on September 1, 2006.

the requested amendment and answered the new SOR allegations. Without objection, the Government's request to amend the SOR is granted.

On February 22, 2016, Department Counsel prepared the Government's written case, a file of relevant material (FORM), and sent it to Applicant. The FORM contains the pleadings, Applicant's security clearance application (SCA), the summary of his security clearance background interview, and two credit reports, which were pre-marked Items 1 – 7. Without objection, Items 1 – 7 are admitted into the administrative record.

On February 25, 2016, Applicant received the FORM. He was advised that he could submit matters in response to the FORM and in support of his case within 30 days of his receipt of the FORM. He did not submit a response or any other matters and, on September 9, 2016, the case was forwarded to the hearing office for assignment to an administrative judge. On November 1, 2016, I received the case assignment, with Applicant's request for a decision on the written record.²

Findings of Fact

Applicant is in his thirties. He is divorced with a 12-year-old child. He is a high school graduate and went to college for about two years. He has been employed as a federal contractor since 2006, and has been with his current employer since 2014.

In March 2014, Applicant submitted a security clearance application (SCA) in connection with his current job. He disclosed a history of substance abuse related issues. Notably, he listed an arrest in 1999 for frequenting a place where drugs were used. Applicant explained that he was at a party and when police arrived they found marijuana. He was cited and required to take drug and alcohol classes. In 2008, he was convicted of aggravated driving while impaired (BAC of .14 or higher). He was sentenced to 90 days in jail and again required to take alcohol and drug classes. He was fired from a past job after failing an employer-required drug screen. (Item 5 at 8)³

During the course of the background investigation Applicant revealed that despite the court-mandated substance abuse classes and past job termination, he used marijuana from approximately 2008 to January 2014, or about two months before he submitted his SCA. He also disclosed experimenting with other illegal drugs when he was younger. Applicant's marijuana use continued after he was hired as a federal contractor and he was working at a large U.S. Government facility. His drug use also continued after he was granted administrative privileges to a sensitive U.S. Government database and tracking system in connection with one of his federal contracting positions. He last recalls using marijuana in about the summer of 2013, when he was at

² Applicant's acknowledgment of receipt of the FORM and administrative documents reflecting that he was still being sponsored for a clearance were marked Appellate Exhibits I and II, respectively.

³ Applicant's alcohol-related conviction and job termination after a failed drug screen were not alleged. I have not considered these matters as separate basis for disqualification. Instead, these matters and, more specifically Applicant's continued use of drugs after experiencing negative legal effects, are only being considered in assessing his mitigation case and whole-person factors

a bar and he took several puffs from a marijuana cigarette offered to him by another bar patron. At the time, Applicant was employed as a federal contractor. (Item 4 at 11-14, 37; Item 5 at 8).

Applicant also disclosed on his SCA and during the course of the background investigation that he was experiencing financial difficulty. He told the background investigator that his marijuana habit had contributed to past financial problems. (Item 5 at 7-8). He disclosed on his SCA that his current financial problems included a home in foreclosure and several other delinquent debts. He stated that his financial problems were linked to a loss of income and poor money management skills. He stated on his SCA and during the background interview that he was looking to resolve his delinquent mortgage through a short sale or a deed in lieu of foreclosure. He also indicated during the course of the background investigation that his non-mortgage related delinquent debts were being paid through a debt consolidation program (DCP), whereby he pays about \$200 a month to the DCP. (Item 4 at 38-43; Item 5 at 11)

Applicant's SOR lists the delinquent home mortgage and several other delinquent debts. Of note, SOR 1.b and 1.c are also listed on Applicant's SCA and were presumably being paid through the DCP. (Item 4 at 42-44) In his Answer, Applicant admitted the five SOR debts. He did not provide an explanation or documentation regarding the current status of the SOR debts or his finances in general.

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are eligible for access to classified information "only upon a finding that it is clearly consistent with the national interest" to authorize such access. E.O. 10865 § 2.

When evaluating an applicant's eligibility for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

Department Counsel must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Applicants are responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven . . . and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15.

Administrative Judges are responsible for ensuring that an applicant receives fair notice of the issues raised, has a reasonable opportunity to litigate those issues, and is not subjected to unfair surprise. ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014).

In resolving the ultimate question regarding an applicant's eligibility, an administrative judge must resolve "[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security." AG ¶ 2(b). Moreover, recognizing the difficulty at times in making suitability determinations and the paramount importance of protecting national security, the Supreme Court has held that "security clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531.

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. 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline F, Financial Considerations

The security concern under this guideline is explained at 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.

The record evidence reflects that Applicant has a history of not meeting his financial obligations and, at a minimum, is unable to pay his debts. This record evidence raises the financial considerations security concern and establishes the disqualifying conditions at AG ¶¶ 19(a) and 19(c).

Applicant bears the burden of mitigating the security concerns raised by the evidence. The financial considerations guideline lists a number of conditions that could mitigate the concern. The following mitigating conditions are most relevant:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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 current financial predicament appears to be related to loss of rental income and potentially a temporary job loss or decrease in pay. However, Applicant failed to show that he acted responsibly in addressing his past-due debts. He has been with his current employer since 2014, and his SCA does not reflect any periods of unemployment in the past 10 years. During the course of the background investigation Applicant claimed that he was making some efforts to resolve his debts. But, as of June 2015, when Applicant submitted his Answer, he admitted that his mortgage was delinquent, but did not provide any information (and, more importantly, corroborating documentation) updating the status of his efforts to resolve the debt. Furthermore, as of February 2016, when Applicant submitted his answer to the amended SOR, his financial situation, despite his purported payments to the DCP, appeared to be getting worse. Accordingly, based on the administrative record, none of the mitigating conditions apply.

Individuals applying for a security clearance are not required to be debt free, nor are they required to resolve all past-due debts simultaneously or even resolve the delinquent debts listed in the SOR first. However, they are expected to present evidence to refute, explain, or mitigate security concerns raised by their circumstances, to include the accumulation of delinquent debt. Moreover, they bear the burden of showing that they manage their finances in a manner expected of those granted access to this nation's secrets.⁴ Applicant failed to meet his burden of persuasion.

Guideline H, Drug Involvement

The security concern regarding illegal drug involvement is set forth at AG ¶ 24:

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

⁴ ISCR Case 07-10310 at 2 (App. Bd. Jul. 30, 2008).

impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

Applicant's past marijuana use raises the above security concern and establishes disqualifying condition AG ¶ 25(a).⁵ Applicant continued to use marijuana after: (a) twice receiving court-mandated drug and alcohol counseling, (b) being fired from a job following a failed drug screen, (c) being hired as a federal contractor, and (d) being granted access to a sensitive U.S. Government system. Under these circumstances, the passage of time since Applicant last used marijuana is by itself insufficient to mitigate concerns that similar conduct will recur. Applicant's past drug use continues to call into question his reliability and ability to follow rules and regulations. I have considered all the applicable mitigating conditions, and find that none apply.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the factors listed at AG ¶ 2(a).⁶ I hereby incorporate my comments under Guidelines F and H. I gave due consideration to all the favorable and extenuating factors in this case, including Applicant's honesty during the security clearance process. However, after weighing the favorable and unfavorable information, Applicant's financial situation and past illegal drug use continue to raise security concerns. Overall, the record evidence leaves me with doubts about his present eligibility for access to classified information.

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 F (Financial Considerations)	AGAINST APPLICANT
Subparagraphs 1.a – 1.e:	Against Applicant

⁵ The Directive defines "drugs" as "mood and behavior altering substances, and include . . . [d]rugs . . . identified and listed in the Controlled Substances Act . . . (e.g., marijuana . . .)," and "drug abuse" includes the "illegal use of a drug . . ." See AG ¶¶ 24(a), 24(b). See also, Memorandum from the Director of National Intelligence, dated October 25, 2014 (recent state law changes decriminalizing marijuana use does not alter federal law regarding marijuana, which remains a Schedule I controlled drug; nor do these recent changes alter the adjudicative guidelines, as an individual's disregard of federal law pertaining to the use of marijuana remains relevant in security clearance determinations)

⁶ The non-exhaustive list of factors are: (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.

Paragraph 2, Guideline H (Drug Involvement):

AGAINST APPLICANT

Subparagraph 2.a:

Against Applicant

Conclusion

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant access to classified information. Applicant's request for a security clearance is denied.

Francisco Mendez
Administrative Judge