



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



In the matter of:)
)
) ISCR Case No. 15-02501
)
Applicant for Security Clearance)

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

10/07/2016

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations, alcohol consumption, and criminal conduct security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On November 2, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F (financial considerations), G (alcohol consumption), and J (criminal conduct). The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 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.

Applicant responded to the SOR on November 28, 2015, and requested a hearing before an administrative judge. The case was assigned to me on June 24, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing

on June 28, 2016, scheduling the hearing for July 19, 2016. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 6 were admitted in evidence without objection. Applicant testified, called two witnesses, and submitted Applicant's Exhibits (AE) A and B, which were admitted without objection. DOHA received the hearing transcript (Tr.) on July 27, 2016.

Findings of Fact

Applicant is a 30-year-old software engineer for a defense contractor. He has worked for his current employer since February 2012. He is applying for a security clearance for the first time. He attended college for a period, but he has not earned a degree. He has never married and he has no children.¹

Applicant was arrested in July 2005 and charged with driving while intoxicated (DWI) and disregarding a stop sign. He pleaded no contest to the DWI charge. His sentence included a fine; probation for three months; community service; and attendance at a driver safety course. He completed all the terms of his probation.²

Applicant was arrested in August 2012 and charged with DWI; operating a vehicle with a suspended license; and speeding. He pleaded guilty to the DWI charge, and the other charges were dismissed. He was sentenced to probation for one year; 31 hours of community service; attendance at a driver safety course; and participation in a Mothers Against Drunk Drivers (MADD) meeting. Applicant did not complete his community service, and he was ordered to serve 30 days in jail in lieu of community service in August 2015. He has now completed all his sentencing requirements.³

Applicant admitted that he drove after drinking at least once or twice after his 2012 arrest, but not recently.⁴ He stated that he has disassociated himself from the people that had a bad influence on him. He stated that he currently only drinks in moderation and he does not drink and drive.⁵

The SOR alleges ten delinquent debts totaling about \$15,987. Applicant admitted owing all the debts at one time. He stated that the debts resulted from him being "young and naïve." He also noted that a \$3,264 debt to a university (SOR ¶ 3.j) resulted when the university withdrew his scholarship without just cause. He reported several delinquent debts on his Questionnaire for National Security Positions (SF 86), which he submitted in September 2012. He discussed his finances when he was interviewed for

¹ Tr. at 19-20, 32; GE 1.

² Tr. at 21-22; Applicant's response to SOR; GE 1, 2, 6.

³ Tr. at 22-24; Applicant's response to SOR; GE 1, 2, 6.

⁴ This information was not alleged in the SOR. Any matter that was not alleged in the SOR will not be used for disqualification purposes. It may be considered in assessing mitigation and in the whole-person analysis.

⁵ Tr. at 18, 25-30.

his background investigation in November 2012. He told the investigator that his finances had stabilized and were improving since he started his employment in February 2012. He stated that he had contacted several of the creditors and was working with them to resolve his debts.⁶

Applicant is credited with paying the \$310 debt alleged in SOR ¶ 3.f. He has not paid any of the other debts alleged in the SOR. Several of the debts became delinquent after his November 2012 interview. He testified that he received a pay raise in January 2016 that he will use to pay his debts. He stated that he is saving money to pay his debts all at once. He has about \$3,500 saved for that purpose.⁷

Applicant called two witnesses and he submitted letters attesting to his excellent job performance. He is praised for his reliability, work ethic, trustworthiness, responsibility, maturity, and honesty.⁸

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 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."

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 security decision.

⁶ Tr. at 18-19, 31-38; Applicant's response to SOR; GE 1, 3-6.

⁷ Tr. at 18, 31-34, 38-42, 54-55; Applicant's response to SOR; GE 3-5.

⁸ Tr. at 43-51; AE A, B.

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 the 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.

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

Analysis

Guideline F, Financial Considerations

The security concern 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

Applicant has delinquent debts that he was unable or unwilling to pay. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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; and

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

Applicant stated that his delinquent debts resulted from him being "young and naïve." He has worked for his current employer since February 2012. When he was interviewed for his background investigation in November 2012, he told the investigator that his finances had stabilized and were improving and that he had contacted several of the creditors and was working with them to resolve his debts. Since that time, he has paid one SOR debt and more debts became delinquent. He stated that he is saving money to pay his debts all at once and that he has about \$3,500 saved for that purpose. The Appeal Board has held that "intentions to pay off debts in the future are not a substitute for a track record of debt repayment or other responsible approaches." See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013) (quoting ISCR Case No. 08-08440 at 2 (App. Bd. Sep. 11, 2009)).

Applicant's financial issues are recent and ongoing. I am unable to determine that they are unlikely to recur. They continue to cast doubt on his judgment, reliability, and trustworthiness. The paid debt alleged in SOR ¶ 3.f is mitigated. There are no mitigating conditions applicable to the remaining debts.

Guidelines G (Alcohol Consumption) and J (Criminal Conduct)

The security concerns for alcohol consumption and criminal conduct are set out in AG ¶¶ 21 and 30:

21. *The Concern.* 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.

30. *The Concern.* Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

AG ¶¶ 22 and 31 describe conditions that could raise alcohol consumption and criminal conduct security concerns and may be disqualifying:

22(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;

22(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;

31(a) a single serious crime or multiple lesser offenses; and

31(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

Applicant's alcohol-related criminal offenses are sufficient to establish the above disqualifying conditions.

AG ¶¶ 23 and 32 describe conditions that could mitigate alcohol consumption and criminal conduct security concerns. The following are potentially applicable:

23(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;

23(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);

23(d) the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program;

32(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

32(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity,

remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

Applicant's last arrest was in August 2012. However, he admitted that he continued to drink and drive after the arrest and that he served 30 days in jail in August 2015 because he did not complete his community service. He testified that he currently only drinks in moderation and he does not drink and drive. He has stable employment and good character evidence.

Despite those mitigating factors, I have lingering concerns about Applicant's alcohol abuse and criminal conduct. The above mitigating factors are insufficient to dispel the alcohol consumption and criminal conduct security concerns.

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F, G, and J in my whole-person analysis.

I considered Applicant's favorable character evidence. However, he served 30 days in jail in August 2015 because he did not complete his community service, and he has unresolved financial problems.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations, alcohol consumption, and criminal conduct security concerns.

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
Subparagraphs 1.a-1.b:	Against Applicant
Paragraph 2, Guideline J:	Against Applicant
Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline F:	Against Applicant
Subparagraphs 3.a-3.e:	Against Applicant
Subparagraph 3.f:	For Applicant
Subparagraphs 3.g-3.j:	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.

Edward W. Loughran
Administrative Judge