



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-04765

Appearances

For Government: Rhett Petcher, Esquire, Department Counsel
For Applicant: *Pro se*

03/28/2017

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On February 10, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline E (Personal Conduct) and Guideline F (Financial Considerations).¹ In a response notarized on March 3, 2016, he admitted all allegations and requested a determination based on the written record. On April 21, 2016, the Government issued a File of Relevant Material (FORM) with five attachments ("Items"). The case was assigned to me on March 21, 2017. Based on my review of the case file and submissions, I find Applicant failed to mitigate personal conduct and financial considerations security concerns.

Findings of Fact

Applicant is a 24-year-old welder who has worked for the same employer since November 2014. He earned a General Educational Development certificate (GED) and is currently enrolled in a vocational program. Except for a period of unemployment from April

¹ The action was taken under Executive Order 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) effective within the DOD on September 1, 2006.

2014 to November 2014, he has been continuously employed since 2009. He is single and has no children.

From 2010 to 2011, Applicant used marijuana with varying frequency. He was arrested in approximately the summer of 2010 and charged with trespassing. In October 9, 2010, he was arrested and charged with possession of marijuana, an illegal drug. On or about December 31, 2011, he was arrested and charged with possession of marijuana and possession of beverage by underage persons.

Applicant is indebted to a creditor for about \$5,895 for the balance due on a repossessed vehicle. This account was opened in 2012. In response to the SOR, he wrote that while he admits this debt, he is paying off this balance in two weeks. No documentary evidence of a payoff was later offered. In addition, Applicant admits he is indebted to a creditor for a collection account concerning a balance owed to a rental car company in the approximate amount of \$772. This account was opened in 2013. He wrote he did not previously know about this collection effort and he thought any balance owed was paid by his "insurance at the time and [he] will pay this amount." (SOR Response) No corroborative documentary evidence was submitted.

In November 2014, Applicant completed and certified a security clearance application (SCA). In response to Section 22, he denied having been arrested by any type of law enforcement in the preceding seven years, or having ever been charged with an offense involving alcohol or drugs. In response to Section 23, he denied having illegally used any drug or controlled substance in the preceding seven years. In response to Section 26, he denied having had any property voluntarily or involuntarily repossessed or foreclosed, or had any bills or debts turned over to a collection agency within the past seven years. When interviewed by an authorized investigator for the DOD, he deliberately failed to disclose any of the above information previously denied.

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, 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 and has the ultimate burden of persuasion to obtain a favorable security decision.”

A person seeking access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. This relationship transcends normal duty hours. Decisions include consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information.

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 E, Personal Conduct

The security concern 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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(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;

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative;

(c) credible adverse information in several issues area 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;

(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. . . ; and

(e) personal conduct or concealment of information about one's conduct that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing.

Applicant falsely denied having been arrested by a law enforcement officer or having used an illegal drug in the seven years preceding the certification of his November 2014 SCA. He falsely denied having any property repossessed or having had any bills or debts turned over to a collection agency in the preceding seven years. He also failed correct or disclose this information to an authorized investigator for the DOD. Therefore, AG ¶ 16(a)(b) and (e) apply.

The guideline also provides several possible mitigating conditions, AG ¶ 17:

(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;

(f) the information was unsubstantiated or from a source of questionable reliability; 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.

Providing false or purposefully incomplete information in the pursuit of a security clearance is a highly serious matter. It undermines the basic trust underlying the very core of the relationship between the Government and one seeking to maintain a security clearance. Here, the misrepresentations were recent and they are admitted. Applicant did not falsify his answers on the advice of counsel, nor did he avail himself of the opportunity to correct the record constructed on his SCA when he met with an investigator. Any steps he may have taken to relieve any stressors he may have faced at the time are not disclosed or explored. Under these facts, none of the available mitigating conditions apply.

Guideline F – Financial Considerations

Under AG ¶ 18, the security concern under this guideline is that 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 engaging in illegal acts to generate funds.

Here, the Government introduced credible evidence showing Applicant has nearly \$6,700 in delinquent debt. He admits responsibility for the two accounts cited. This is sufficient evidence to invoke two of the available disqualifying conditions:

AG ¶ 19(a) inability or unwillingness to satisfy debts; and

AG ¶ 19(c) a history of not meeting financial obligations.

Five conditions could mitigate these finance-related security concerns:

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.

Other than claiming he was previously unaware of the existence of the smaller debt, Applicant provided no information or documentation regarding these debts.² There is no evidence he has tried to contact either creditor or tried to formally dispute either account. There is no evidence he has received financial counseling. The accounts were opened before Applicant's only cited period of unemployment. No information as to the circumstances surrounding his acquisition of these delinquent debts, except that he writes he was previously unaware of the smaller debt, was offered. Given these considerations, none of the available mitigating conditions apply.

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 adjudicative process factors listed at AG ¶ 2(a). Under AG ¶ 2(c) sets forth the need to utilize a whole-person evaluation. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I incorporated my comments under the guideline at issue in my whole-person analysis.

² Even if this is true, and there is no reason to suggest it is not, that still would not relieve Applicant of his responsibilities as to the other delinquent debt at issue.

Applicant is in his early 20s, single, has no children, earned a GED certificate, and is currently in a vocational program. Other than some months in 2014, he has been continuously employed since 2009. Few other relevant facts are known aside from his admissions regarding marijuana use, arrests, two delinquent debts, and Applicant's admission that he falsified material facts on his SCA. Given the scant information provided, I find Applicant failed to mitigate personal conduct and financial considerations security concerns. Clearance is denied.

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:

Guideline E - Personal Conduct

Paragraph 1, Guideline E:	AGAINST APPLICANT
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Subparagraphs 1.a-1.h:	Against Applicant
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Guideline F – Financial Considerations

Paragraph 2, Guideline F:	AGAINST APPLICANT
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Subparagraphs 2.a-2.b:	Against Applicant
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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 a security clearance. Eligibility for access to classified information is denied.

Arthur E. Marshall, Jr.
Administrative Judge