



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



In the matter of:)
)
) ISCR Case No. 15-05436
)
Applicant for Security Clearance)

Appearances

For Government: David Hayes, Esq., Department Counsel
For Applicant: *Pro se*

08/30/2017

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. Eligibility for access to classified information is denied.

Statement of the Case

On February 26, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F, financial considerations, and E, personal 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) effective within the DOD on September 1, 2006. On June 8, 2017, new AG were implemented and are effective for decisions issued after that date.¹

¹ I considered the previous AG, effective September 1, 2006, as well as the new AG, effective June 8, 2017. My decision would be the same if the case was considered under the previous AG

Applicant answered the SOR on March 23, 2016, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM). Applicant received it on October 4, 2016. The Government's evidence is identified as Items 1 through 7. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant did not respond to the FORM, object to the Items, or provide documents. Items 1 through 7 are admitted into evidence. The case was assigned to me on August 23, 2017.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.b, 1.c, 1.g, 1.h, 2.a, and 2.b. The remaining allegations he either did not respond to or provided a narrative explanation. I will consider these responses as denials. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 41 years old. He married in 2001, separated in 2003, and divorced in 2013. He has three children, ages 16, 15 and 11 years old. He attends college, but has not earned a diploma. He served in the National Guard from 1996 to 1998 and received an honorable discharge. He served on active duty in the military from 1998 to 2006 and received an honorable discharge. Applicant disclosed on his security clearance application (SCA) that he has been employed by a federal contractor from July 2010 to the present. Before then, he was unemployed from February 2010 to July 2010. He worked for another federal contractor from February 2006 to February 2010. He disclosed he was granted a security clearance in 2007.²

The debts alleged in the SOR are supported by credit reports from September 2013, June 2015, and August 2016, and Applicant's admissions. The SOR alleges a collection account for child support (SOR ¶ 1.a-\$5,100). Applicant stated in his SOR answer that this was paid with his 2012 federal income tax refund, and the collection account was closed. He admitted the debt in SOR ¶ 1.b (\$3,206) and said he was currently working with the creditor to resolve the account. He admitted the debt in SOR ¶ 1.c (\$4,021) and stated it was for a repossessed car. He said he paid half the debt, and he was attempting to get his ex-wife to pay the other half. Applicant stated he paid the collection account in SOR ¶ 1.d (\$88). He stated that the debts in SOR ¶ 1.e (a judgment from 2006 for \$578) and 1.i (\$688) were no longer on his credit report. He did not provide a copy of the credit report or indicate that he had paid the judgment or collection account. Applicant stated that he would soon be working on a payment plan for the collection account in SOR ¶ 1.g (\$5,981). He stated he would soon be contacting the collection account creditor in SOR ¶ 1.h (\$376) to pay the debt. He said he paid the debt in SOR ¶ 1.j (\$40). Applicant did not provide any documentary evidence to support his statements regarding any of the debts alleged in the SOR.³

² Item 2.

³ Item 1.

During Applicant's December 2013 background investigation, the government investigator brought to Applicant's attention the debts in SOR ¶¶ 1.a, 1.c, 1.e, 1.h, 1.i, and 1.j. He disagreed with the details of some accounts or their validity. His intent was to verify the accounts, and he would pay what was owed if it was determined he owned the account. No information was provided regarding what steps he may have taken to follow through on his intent.⁴

Applicant admitted he falsified material facts on his SCA that he signed in April 2013, when he answered "no" and he failed to disclose that in the past seven years he had bills turned over to collection agencies; had a judgment entered against him; had accounts that had been charged off, suspended or canceled for failing to pay as agreed. During his December 2013 interview with a government investigator, Applicant confirmed his "no" response to the investigator. During his interview, Applicant stated he was unaware of the delinquent accounts, believed they had zero balances, or had already resolved them so he did not disclose them, but was going to verify them. Applicant did not provide an explanation in his SOR answer and did not provide a response to the FORM. Applicant disclosed on his SCA that he was delinquent in his child support payments due to a period of unemployment, but indicated the problem was resolved in 2012.⁵ Although Applicant admitted the SOR allegation of falsification, I am not convinced based on his statements to the investigator that he deliberately falsified the information.

In February 2011, Applicant was arrested and charged with carrying a concealed weapon and possession of marijuana.⁶ He held a security clearance at the time. Applicant's SOR answer stated:

The concealed weapon and marijuana were left in my car from a friend of a friend that were in my car when I gave them a ride. By the time I could return back, I got pulled over by the police. I called my lawyer and the charges were dropped. As far as those individuals are concerned, after that night I no longer associate with them.⁷

Applicant disclosed on his SCA that he had been arrested in February 2011 for driving with a suspended license. The question asked "Did this offense involve any of the following?" It specifically asked, "Involve alcohol or drugs." Applicant answered "no." It further asked if Applicant had EVER been charged with an offense involving alcohol or drugs. He again answered "no." When interviewed about the incident, Applicant did not voluntarily disclose to the investigator the concealed weapon and marijuana possession arrest and charge. He only disclosed that his arrest was for driving with a suspended

⁴ Item 3.

⁵ Items 1, 2, 3.

⁶ Item 4.

⁷ Item 1.

license and that he pled no contest, paid the court costs, and fine. He was asked twice more if he had any other incidents involving arrests and the police. He twice responded "no."

The investigator then confronted Applicant with the concealed weapon and marijuana possession charge. Applicant admitted the information was accurate and that he had been arrested and charged as alleged, but did not think he had to list the information on his SCA because the charges were dropped. No evidence was provided as to the final disposition of the charge. The weapon found was a brass knuckles belt buckle, and less than an ounce of marijuana was found. In his answer to the SOR for ¶ 2.c alleging he intentionally falsified his SCA by failing to disclose this arrest and charge he stated, "I admit, to my understanding any charges were dropped. At the time I answered truthfully." Applicant repeatedly had an opportunity to disclose his arrest when he was specifically asked by the investigator, and he failed to provide the information thereby showing his intent. I did not find Applicant's explanation credible.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 national security eligibility will be resolved in favor of the 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15, states that 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 as to 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 that an applicant may deliberately or inadvertently fail to 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.

Section 7 of EO 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 F: Financial Considerations

The security concern relating to the guideline for financial considerations is set out in AG ¶ 18:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has unresolved delinquent debts. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(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 acknowledged his delinquent collection accounts and stated some were paid or he intended to resolve them, but he failed to provide documentary evidence to support his assertion. His delinquent debts are ongoing, and there is insufficient evidence to conclude that they occurred under circumstances that are unlikely to recur. AG ¶ 20(a) does not apply.

Applicant indicated in his SCA that he got behind on his child support due to unemployment, but then he resolved the debt. His unemployment at the time was beyond his control. He has been steadily employed since 2010. There is insufficient evidence to show he has acted responsibly under the circumstances. AG ¶ 20(b) does not apply. Applicant did not provide evidence he has received financial counseling or that he has made a good-faith effort to repay overdue creditors. He stated he paid some of the alleged SOR debts, but did not provide corroborating evidence. He failed to provide the basis or actions he may have taken toward any debts he disputes. AG ¶¶ 20(c), 20(d) and 20(e) do not apply.

Guideline E: Personal Conduct

AG ¶ 15 expresses the security concern for 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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following 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; and

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other government representative.

Applicant disclosed on his SCA that he was previously delinquent in his child support payments, but as of 2012, they were paid. He did not disclose any of the delinquent debts alleged in the SOR. After considering his statements to the government investigator, I believe there is insufficient evidence to conclude he was aware of debts that were delinquent when he completed his SCA. His responses to the investigator were that he was unaware that he owed the debts. If he did not know about the debts or did not know they were delinquent because he believed they had a zero balance, I cannot find his actions were deliberate. AG ¶¶ 16(a) and 16(b) do not apply. I find in his favor for SOR ¶¶ 2.a and 2.b.

Applicant was arrested in 2011 for driving with a suspended license, which he disclosed on his SCA. He was also charged at the same time with having a concealed weapon and possession of marijuana. The SCA specifically directs applicants to disclose if they have EVER been arrested or charged with an offense involving drugs. The instructions specifically direct an applicant to disclose this information "regardless of whether the record in your case has been sealed, expunged, or otherwise stricken from the court record, or the charge has been dismissed." Applicant was afforded an opportunity by the investigator to disclose this information, and he repeatedly failed to do so until he was confronted with the information. Applicant deliberately failed to disclose on his SCA that he was arrested and charged with carrying a concealed

weapon and possession of marijuana. I did not find his explanation compelling as he had several opportunities to provide this information to the investigator and did not, thereby reflecting his prior intent. AG ¶ 16(a) applies.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(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.

Applicant's conduct is not minor. The concern is that Applicant repeatedly had an opportunity to provide the information to the investigator and did not until he was confronted with the information. The government relies on those holding security clearances to disclose the information requested. His conduct casts doubt on his reliability, trustworthiness, and good judgment. AG ¶¶ 17(a) and 17(c) do not apply.

Guideline H: Drug Involvement and Substance Misuse

The security concern relating to the guideline for drug involvement and substance misuse is set out in AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

AG ¶ 25 provides conditions that could raise security concerns. The following is potentially applicable:

(c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant was arrested in 2011 and charged with carrying a concealed weapon and possession of marijuana. The above disqualifying condition applies.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 26 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) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions to overcome the problem, and has established a pattern of abstinence, including, but not limited to: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were being used; and (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

Applicant stated the marijuana and weapon did not belong to him; the charge was dismissed; and he does not associate with those who left it in his car. There is sufficient evidence that this incident happened more than six years ago and under circumstances that are unlikely to recur. I find the above mitigating conditions apply.

Guideline J: Criminal Conduct

The security concern for criminal conduct is set out in AG ¶ 30:

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.

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 31, and the following is potentially applicable:

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

Applicant was arrested and charged with carrying a concealed weapon and possession of marijuana. The above disqualifying condition applies.

The guideline also includes conditions that could mitigate security concerns arising from criminal conduct. The following mitigating conditions under AG ¶ 32 are potentially applicable:

(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;

(c) no reliable evidence to support that the individual committed the offense; and

(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Applicant was arrested for driving with a suspended license. At the same time he was charged with carrying a concealed weapon and possession of marijuana, which was in his car. Applicant disputed that the weapon and marijuana belonged to him, but rather it was left in his car by a friend of a friend. There is no evidence of the final disposition of the charge. AG ¶ 32(c) does not apply. It has been more than six years since the arrest, and it happened under circumstances that are unlikely to recur. I find AG ¶¶ 32(a) and 32(c) 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 the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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 E, F, H, and J in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant is 41 years old. He has numerous unresolved delinquent debts. Without corroborating evidence, I am unable to conclude he mitigated any of the debts he indicated he paid or resolved. Although the circumstances of his arrest for carrying a concealed weapon and possession of marijuana may have been an unfortunate circumstance and does not rise to the level of being a security concern, Applicant's deliberate failure to disclose the information of his SCA is a concern. 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 failed to mitigate the security concerns arising under Guideline F, financial considerations, and Guideline E, personal conduct. He successfully mitigated the security concerns under Guideline H, drug involvement, and Guideline J, criminal conduct.

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:	AGAINST APPLICANT
Subparagraphs 1.a-1.j:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	Against Applicant
Paragraph 3, Guideline H:	FOR APPLICANT
Subparagraph 3.a:	For Applicant
Paragraph 4, Guideline J:	FOR APPLICANT
Subparagraph 4.a:	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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge