



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



In the matter of:)
)
) ISCR Case No. 15-06681
)
Applicant for Security Clearance)

Appearances

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

03/08/2017

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the personal conduct and financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On April 21, 2016, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline E, personal conduct, and Guideline F, financial considerations. The DOD acted 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 answered (Answer) the SOR on May 27, 2016, and requested a hearing. The case was assigned to me on May 15, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 21, 2016, setting the hearing for October 27, 2016. The hearing was held as scheduled. The Government offered exhibits (GE) 1 through 4, which were admitted into evidence

without objection. The Government's discovery letter and exhibit list were marked as hearing exhibits (HE I and II). Applicant testified and offered exhibit (AE) A - D, which were admitted into evidence without objection. The record was held open to allow Applicant to submit additional evidence. He timely submitted AE E - F, which were admitted without objection. DOHA received the hearing transcript (Tr.) on November 3, 2016.

Procedural Issue

Department Counsel moved to withdraw SOR allegations ¶ 1.a and ¶1.c. There being no objection, I granted the motion. My formal findings will reflect that those allegations were withdrawn.¹

Findings of Fact

Applicant admitted SOR ¶¶ 1.b and 2.a. He denied SOR ¶¶ 2.b - 2.m. I incorporate these admissions into my findings of fact. After a review of the pleadings, transcript, and evidence, I make the following additional findings of fact.

Applicant is 31 years old and has worked for his current employer since 2014. He has a high school diploma and some technical schooling. He is single, never married, and has no children. He has worked for his current contractor-employer since January 2015. He is an electrician who works on construction sites for U.S. agencies in foreign countries.²

The SOR alleges Applicant was arrested and charged with driving under the influence (DUI), hit and run, leaving the scene of an accident, and other related charges. It also alleges Applicant has 13 delinquent debts in the total amount of \$17,344. All the debts were listed in a credit report from February 2015.³

Personal Conduct Facts. In January 2013, Applicant was at a restaurant celebrating a friend's birthday. He had dinner and drinks. The weather was bad when he decided to drive home. On the way home he hit another car, slid, and damaged some property. He left the scene because he couldn't see the other car and believed it left. He was stopped by police a few blocks away. He was arrested for DUI. A blood-alcohol test showed he was over the legal limit. He pleaded guilty to DUI and the remaining charges were dismissed. He complied with all his sentencing requirements and his probation ended in April 2014. He has had no further law enforcement involvement since that arrest. He realizes he used poor judgment when he drove after drinking and expressed remorse

¹ Tr. at 12-13.

² Tr. at 5, 24; GE 1.

³ GE 2-3.

for his action. He learned from the experience and although he still drinks socially, he no longer drives when he drinks. I found Applicant's testimony credible.⁴

Financial Consideration Facts. Applicant had full-time employment upon graduating from high school. Because he was young and inexperienced, he began using credit cards without realizing the ramifications of such use. After approximately five and a half years, he was laid-off from his job and remained unemployed for approximately the next two years. It was during this time that he became delinquent on many of his debts. In 2015, he hired a credit counseling service (CCS) to assist him with his debts. Other than disputing several debts, CCS provided little help. CCS told him that if a debt was charged-off, he was no longer responsible for it. Before he was interviewed by a defense investigator in June 2015, he had addressed some of his debts, but after the interview he understood the significance of his financial problems and began addressing the remaining debts. The status of the debts is as discussed below.⁵

SOR ¶ 1.a (charged-off account \$5,319). This is a charged-off amount for a vehicle repossession. He was unable to make payments after he was unemployed. He was told by CCS he was no longer responsible for the debt once it was charged-off. At hearing, he became aware that for security purposes, payment of the debt was still an issue. He presented documentation that he paid this debt in full later in the day after his hearing. This debt is resolved.⁶

SOR ¶ 1.b (credit card \$2,177). Applicant documented that he paid this credit card debt in August 2015. This debt is resolved.⁷

SOR ¶ 1.c (credit card \$526). Applicant documented that he paid this credit card debt in March 2015. This debt is resolved.⁸

SOR ¶ 1.d (repossession collection account \$2,516). This repossession occurred when Applicant was unemployed and could no longer make the payments. Applicant documented that he paid this repossession debt in January 2016. This debt is resolved.⁹

⁴ Tr. at 26, 29-33; GE 2, 4; Answer.

⁵ Tr. at 26, 36-37.

⁶ Tr. at 38-40; AE F.

⁷ Answer (See attached credit bureau report (CBR)); AE B.

⁸ Answer (See attached CBR).

⁹ Tr. at 41; AE F.

SOR ¶ 1.e (credit card \$827). Applicant documented that he paid this credit card debt in December 2015. This debt is resolved.¹⁰

SOR ¶ 1.f (credit card \$706). Applicant documented that he paid this credit card debt in April 2015. This debt is resolved.¹¹

SOR ¶ 1.g (credit card \$625). Applicant documented that he paid this credit card debt in January 2016. This debt is resolved.¹²

SOR ¶ 1.h (credit card \$556). Applicant documented that he paid this credit card debt in April 2015. This debt is resolved.¹³

SOR ¶ 1.i (telecommunications debt \$524). Applicant documented that he paid this debt in June 2015. This debt is resolved.¹⁴

SOR ¶ 1.j (insurance collection debt \$497). Applicant testified he paid this debt. His testimony is credible. The most recent CBR from May 2016 does not show this debt. This debt is resolved.¹⁵

SOR ¶ 1.k (telecommunication debt \$451). Applicant documented that he paid this credit card debt in December 2015. This debt is resolved.¹⁶

SOR ¶¶ 1.l and 1.m (insurance collection debts \$119, \$101). Applicant testified he paid these debts. His testimony is credible. The most recent CBR from May 2016 does not show these debts. These debts are resolved.¹⁷

Current Finances. Applicant's most recent CBR shows he is in good standing. His annual income is approximately \$50,000. He has approximately \$50,000 in his savings account. He received some financial counseling from CCS.¹⁸

¹⁰ Answer (See attached CBR).

¹¹ Answer (See attached CBR); AE A.

¹² Answer (See attached CBR).

¹³ Answer (See attached CBR).

¹⁴ Answer (See attached CBR).

¹⁵ Tr. at 43; Answer (See attached CBR).

¹⁶ Answer (See attached CBR).

¹⁷ Tr. at 43; Answer (See attached CBR).

¹⁸ Tr. at 43-44; Answer (See attached CBR).

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 that 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." 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, 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 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline E, Personal Conduct

AG ¶ 15 expresses the personal conduct security concern:

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 in this case. The following disqualifying condition is potentially applicable:

(c) credible adverse information in several adjudicative issue areas 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.

Applicant's 2013 DUI arrest and conviction meets the conditions in AG ¶ 16(c).

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

(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; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant's DUI occurred four years ago and he has not repeated that act. AG ¶ 17(c) applies. He is much more responsible concerning his drinking as demonstrated by his decision never to drive after he has been drinking. He showed remorse and acknowledged responsibility for his actions. I find it is unlikely that future similar

behavior will recur. His recent behavior no longer casts doubt on his reliability, trustworthiness, and good judgment. Under these circumstances, this act is sufficiently attenuated after considering his behavior in its totality. AG ¶¶ 17(d) and 17(e) apply.

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18 as follows:

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. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant had 13 debts that he failed to pay over an extended period of time. The evidence is sufficient to raise the above disqualifying conditions stated in AG ¶¶ 19(a) and 19(c).

Several financial considerations 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, 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 has made significant efforts to resolve his debts. All the debts but one were paid before the issuance of his SOR. Based upon his actions to resolve his debts, it is reasonable to conclude that these types of debts will not recur, nor do they cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) applies.

The circumstances that led to Applicant's financial problems, his job loss and resulting two years of unemployment, were conditions beyond his control. He acted responsibly by resolving his debts. AG ¶ 20(b) applies.

Applicant received financial counselling. He made good-faith efforts to pay his debts with the resources he had at the time. He promptly paid the last large remaining debt the same day as his hearing, after he realized he was given bad advice about not having to pay the debt. AG ¶ 20(c) and ¶ 20(d) fully 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 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 relevant facts and circumstances surrounding this case. I have incorporated my comments under Guidelines E and F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

I considered the personal circumstances that contributed to his financial problems. I found Applicant to be honest and candid about the circumstances that led to his debts. He took responsible actions to resolve them. I find it unlikely that Applicant will be in a similar future situation. I also considered Applicant's acknowledgement of responsibility, his remorse, and his rehabilitation efforts after his DUI conviction.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the personal conduct and financial considerations 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 E:	FOR APPLICANT
Subparagraphs 1.a and 1.c:	Withdrawn
Subparagraph 1.b:	For Applicant
Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraphs 2.a – 2.m:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Robert E. Coacher
Administrative Judge