



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



In the matter of:

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ISCR Case No: 15-06779

Applicant for Security Clearance

For Government: Caroline Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

10/25/2016

Decision

DAM, Shari, Administrative Judge:

Applicant mitigated the financial considerations and drug involvement security clearance concerns. Eligibility for access to classified information is granted.

Statement of the Case

On March 28, 2016, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations, and Guideline H, Drug Involvement. 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 for Determining Eligibility for Access to Classified Information* effective within the DOD on September 1, 2006.

Applicant answered the SOR in writing (AR) on April 20, 2016, and requested a hearing before an administrative judge. On June 16, 2016, the Department of Defense

Office of Hearings and Appeals (DOHA) assigned the case to another administrative judge. It reassigned the case to me on July 18, 2016, and issued a Notice of Hearing that same day. The case was set for August 17, 2016, and heard as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 4 into evidence. Applicant testified and offered Applicant Exhibits (AE) 1 through 4 into evidence. All exhibits were admitted without objections. DOHA received the hearing transcript (Tr.) on August 24, 2016. The record remained open until September 14, 2016, in order to provide Applicant time to submit additional documents. Applicant timely submitted AE 5 through 8, which were admitted into the record without objection.

Findings of Fact

Applicant denied the allegations in SOR ¶¶ 1.a, 1.b, and 1.c. He admitted the allegation in SOR ¶ 2.a. (AR.) His admission is incorporated herein.

Applicant is 41 years old and married since 2004. They have a five-year-old child. His wife works for a retail store. He completed a master's degree in 2015. He works for a defense contractor. Previously, he has been self-employed at times. He held a security clearance in 2006 when he worked for another defense contractor. He performs community service through his employer. (Tr. 15-19; GE 1.)

In 2006 Applicant co-signed a first and second mortgage with his father for the purchase of a property. (Tr. 21, 30.) This was the second time Applicant helped his father when he was having business problems. Applicant was not involved in the management of the property and did not make payments on the loans. Sometime later, the mortgage bank that made both loans contacted Applicant and told him that his father had stopped making monthly payments and that there was an unpaid balance. Applicant then asked his father to make the unpaid payments and sell the property. (Tr. 21-25.) In January 2015 the property went into foreclosure. (GE 5.) In November 2015 a court entered a Consent Judgment for Foreclosure on the property that resolved all claims between the parties, which included both mortgages. (AE 1, AE 5.)

In response to questioning about whether the Consent Judgment resolved the second mortgage, Applicant testified that his attorney advised him that it did, and that he was not responsible for any deficiencies. Applicant did not receive an IRS Form 1099C notifying him that he owed taxes on a cancelled debt. (Tr. 27-29.) Applicant said that he will not co-sign any legal documents with his father in the future. (Tr. 30, 39.) The two mortgages were alleged as having past due amounts in SOR ¶ 1.a (\$18,660) and SOR ¶ 1.b (\$80,355).

The SOR alleged a third unpaid debt in ¶ 1.c (\$2,706). Applicant said this debt pertains to a storage locker he rented when he was in business in 2010. He said he subsequently terminated the lease on it and a bank took possession of it. According to an April 2015 credit report the debt was reported as delinquent in March 2015. (GE 5.) When confronted about the debt during a July 2015 interview, Applicant stated he was not responsible for the debt. (GE 3.) He testified that he was unaware of its delinquency

until he reviewed the 2015 credit report. He denied responsibility for the debt. (Tr. 31.) He subsequently asked the bank for proof that it was his debt. He filed a dispute with a credit bureau, but has not received a response. (Tr. 32.)

Applicant and his wife have a budget. Their annual income is about \$213,000. (Tr. 21.) He said all of his bills are current, including his mortgage. (Tr. 32.)

In response to questions in his April 2015 security clearance application (SCA), regarding illegal drug use, Applicant disclosed that the first time he used marijuana was in January 1992 and the most recent time was June 2014, when he went on a trip with friends from high school to celebrate a friend's graduation. He stated that they went to a state where marijuana is legal. (Tr. 35; GE 1.) He stated in the SCA that "I don't think that it was illegal, but I think that I should disclose it." (GE 1.) During his July 2015 interview, Applicant said he occasionally, maybe once or twice a year, smoked marijuana over the years. He said he never purchased or sold it. He said he does not intend to use it again because he wants to be a responsible parent, and does not associate with friends who use marijuana. (GE 1, GE 3.)

Applicant testified that after his daughter was born in 2010 his use of marijuana decreased. His wife does not use it. He said the last time he used marijuana was in June 2014. He does not have marijuana in his home. He said he did not use marijuana while holding a security clearance. He seldom sees his high school friends, although some are friends of his family. He had a random drug screening before he was hired in 2014 by his employer. He is aware of the company's prohibition policy regarding illegal drug use. (Tr. 33-38.) In his SCA he wrote that "I have no plans to use this substance in the future because it is not part of my life style and it simply is not worth the risk with my current employment and the prospect of losing my job and/or security clearance." (GE 1.)

Applicant stated that his performance evaluations ratings since starting with his employer have noted that he has exceeded expectations. (Tr. 19; AE 7) He received a 20 percent increase in his salary and was promoted to management where he supervises 18 people. (Tr. 19.) His manager stated in a letter of recommendation that he has no reason to question Applicant's judgment or integrity. He recommends Applicant for a security clearance. (AE 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 (AG) list potentially disqualifying and mitigating conditions, which are useful 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 AG ¶ 2(a), describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

According to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides that an adverse decision shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

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 protect or 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.

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.¹

AG ¶ 19 notes a disqualifying condition that could potentially raise security concerns in this case:

(a) inability or unwillingness to satisfy debts.

The two mortgages, which Applicant helped his father obtain, became delinquent in January 2015 and were foreclosed in November 2015. A debt that Applicant assumed in 2010 became delinquent in April 2015. The evidence is sufficient to raise the above disqualifying condition.

After the Government produced substantial evidence of that disqualifying condition, the burden shifted to Applicant to produce evidence and prove mitigation of the security concerns. AG ¶ 20 sets forth conditions that could potentially mitigate financial security concerns raised under this guideline:

(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;

(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

(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 co-signed a first and second mortgage for his father on a piece of property that subsequently went into foreclosure because his father stopped making the monthly payments. These circumstances are unlikely to recur because Applicant does not intend to enter into legal contracts with his father in the future. This situation does not cast doubt on his current reliability, trustworthiness, or good judgment. The evidence

¹ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

establishes mitigation under AG ¶ 20(a). Applicant did not provide evidence that he participated in credit, financial, or budgetary counseling. However, he submitted evidence that the delinquent loans are resolved. Mitigation is established under AG ¶ 20(c). He said he is disputing the \$2,700 debt with a credit bureau, but did not provide evidence that it is resolved. Minimal mitigation is established under AG ¶ 20(e).

Guideline H, Drug Involvement

AG ¶ 24 expresses the security concern pertaining to drug involvement:

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

(a) Drugs are defined as mood and behavior altering substances, and include:

(1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and

(2) inhalants and other similar substances; and

(b) drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

AG ¶ 25 describes a condition that could raise a security concern and may be disqualifying in this case:

(a) any drug abuse (see above definition).

Applicant disclosed in his 2014 SCA that on occasion he illegally used marijuana from 1992 until June 2014.

AG ¶ 26 provides two conditions that could mitigate security concerns raised under this guideline:

(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) a demonstrated intent not to abuse any drugs in the future, such as:

- (1) disassociation from drug-using associates and contacts;
- (2) changing or avoiding the environment where drugs were used;
- (3) an appropriate period of abstinence; and,
- (4) a signed statement of intent with automatic revocation of clearance for any violation.

AG ¶ 26(a) can mitigate security concerns when drug offenses are not recent. There are no “bright line” rules for determining when such conduct is “recent.” The determination must be based “on a careful evaluation of the totality of the record within the parameters set by the directive.”² In 2015 SCA Applicant disclosed that he occasionally used marijuana over a period of years. He denied using it while previously holding a security clearance. He has not used marijuana since June 2014, over two years ago. Based on his honest disclosure, the circumstances surrounding his June 2014 use of marijuana, a recent promotion, and a commitment to being a responsible parent, similar conduct is unlikely to recur. AG ¶ 26(a) provides mitigation.

Applicant seldom sees the people with whom he illegally used marijuana. His wife does not use marijuana. He has not used any illegal drugs for two years, and stated that he does not intend to use them in the future. The evidence establishes some mitigation under AG ¶¶ 26 (b)(1), (3), and (4).

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). They include the following:

- (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) 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.

²ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004.)

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must include 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 pertinent facts and circumstances surrounding this case. Applicant is a 41-year-old man, who wanted to help his father purchase a property. Unfortunately, his father was unable to financially manage the property and Applicant became legally responsible for the resulting debt. In November 2015 a court resolved the matters through a consent judgment. Applicant may be responsible for a \$2,700 debt, which he will be able to resolve given his budget if his pending dispute is unsuccessful. His financial obligations are under control. When he completed his SCA in 2015, he honestly disclosed his past infrequent use of marijuana, which ceased two years ago. He expressed his intention not to use it again and is aware of the adverse consequences future drug abuse could have on his employment. The record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant mitigated the security concerns arising under the financial considerations and drug involvement guidelines.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
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Subparagraphs 1.a through 1.c:	For Applicant
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Paragraph 2, Guideline H:	FOR APPLICANT
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Subparagraph 2. a:	For Applicant
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Conclusion

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

SHARI DAM
Administrative Judge