



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



In the matter of:

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) ISCR Case No. 14-05883
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Applicant for Security Clearance

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: *Pro se*

June 27, 2018

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of the Case

On November 13, 2013, Applicant submitted a security clearance application (SCA). On December 2, 2016, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guidelines F, G, and E. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing (Answer) on February 21, 2017, and again on April 1, 2017, and requested a hearing before an administrative judge. The case was assigned to me on August 17, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on September 8, 2017. I convened the hearing as scheduled on September 27, 2017. The Government offered Government

Exhibits (GXs) 1 through 9, which were admitted without objection. Applicant testified on his own behalf and presented Applicant Exhibit (AppX) A. DOHA received the transcript of the hearing (TR) on October 5, 2017. The record was left open for the receipt of additional evidence. On September 29, 2017; on October 30, 2017; and on December 1, 2017; respectively, AppXs B~D were submitted, and received without objection. The record closed at that time.

The SOR in this case was issued under the adjudicative guidelines that came into effect within the DoD on September 1, 2006. Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (December 10, 2016), implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions¹ issued on or after June 8, 2017, are to be decided using the new *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), as implemented in Appendix A of SEAD 4. I considered the previous adjudicative guidelines, as well as the new AG, in adjudicating Applicant's national security eligibility. My decision would be the same under either set of guidelines, although this decision is issued pursuant to the new AG promulgated in SEAD 4.

Findings of Fact

Applicant admitted, in part, and denied, in part, the allegations in SOR ¶¶ 1., and 2. He admitted SOR allegation ¶ 3. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 47-year-old employee of a defense contractor. (GX 3 at page 5.) He has been employed with the defense contractor since November of 2015. He has held a security clearance since about June of 1992. (TR at page 15 line 3 to page 16 line 7, and GX 3 at page 29.)

Guideline F – Financial Considerations

1.a. and 1.b. Applicant failed to file his Federal and state income tax returns for tax years 2012~2015 in a timely fashion. (TR at page 16 line 8 to page 18 line 7, at page 20 lines 3~20, and AppXs E and D.) He attributes his tardy filings to being “lazy.” (TR at page 17 lines 13~18.) Applicant was also tardy in filing his tax returns for tax year 2016, which was filed after his September hearing, in October of 2017. (AppX B.)

1.c. and 1.d. As of August 2017, Applicant owes \$10,038 in delinquent taxes for tax year 2010; \$14,663 in delinquent taxes for tax year 2011; \$5,078 in delinquent taxes for tax year 2012; and \$295 in delinquent taxes for tax year 2014. (AppX B.) In March of 2017, Applicant avers he has “been making close to \$1,000 [monthly] payments” to the Internal Revenue Service (IRS), but has submitted no supporting documentation in this regard. (TR at page 18 line 8 to page 19 line 17, and at page 23 lines 19~25.)

¹ SEAD 4 ¶ D.7 defines “National Security Eligibility” as, “Eligibility for access to classified information or eligibility to hold a sensitive position, to include access to sensitive compartmented information, restricted data, and controlled or special access program information.”

Guideline G - Alcohol Consumption

2.a.-2.e. Applicant first started consuming alcohol while serving in the U.S Navy at the age of about 21. (TR at page 26 line 8 to page 32 line 5.) He used to drink “seven or eight beers” at home in one sitting. He currently consumes “three or four beers” in one sitting on weekends. (*Id.*) As a result of this consumption, in 1996 Applicant was ordered to attend alcohol counseling after an alcohol-related incident at a port of call. (TR at page 26 line 8 to page 32 line 5.) In 1999, Applicant was found guilty of Driving Under the Influence (DUI). In 2005, he was arrested for DUI, but found guilty of a reduced charge; and in 2011, Applicant was again arrested for DUI, but pled guilty to a reduced charge. (*Id.*) More recently, in 2014, he was found guilty of a second DUI, has not completed a court-ordered alcohol-abuse-related program, and Applicant is still on probation until 2019. (TR at page 26 line 8 to page 32 line 5.)

Guideline E – Personal Conduct

3.b. In July of 2008, Applicant received a written reprimand for an incident he claims he does not recall. (TR at page 32 lines 6~16, and at page 35 line 20 to page 36 line 6.)

3.a. In March of 2014, Applicant received a second written reprimand and was suspended for two days for sexual harassment; an allegation he denies, claiming he considered the complaining victim “as a sister . . . my friend.” (TR at page 32 line 17 to page 33 line 24.)

Policies

When evaluating an applicant’s suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s national security eligibility.

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 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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.”

A person applying for national security eligibility seeks to enter 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 national security eligibility. 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 or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination 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 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.

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

(f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant is consistently late in filing his Federal and state income taxes. He attributes his tardiness to being lazy. Applicant currently owes over \$30,000 in back taxes. The evidence is sufficient to raise this disqualifying condition.

AG ¶ 20 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 20 including:

(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;

(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;

(f) the affluence resulted from a legal source of income; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's income tax problems are ongoing, as he is consistently late in his filings. He has not established that he addressing the significant back taxes he owes. Mitigation under AG ¶ 20(g) has not been established. This allegation is found against Applicant.

Guideline G - Alcohol Consumption

The security concern relating to the guideline for Alcohol Consumption is set out in AG ¶ 21:

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.

The guideline at AG ¶ 22 contains two conditions that could raise a security concern and may be disqualifying:

(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 the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder; and

(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder

Applicant has two DUI convictions, and three other alcohol-related incidents between 1996 and 2014. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline at AG ¶ 23 contains four conditions that could mitigate security concerns. None of these conditions apply. Applicant is still on probation as a result of his most recent DUI, and is not complying with the terms of that probation. This allegation is also found against Applicant.

Guideline E - Personal Conduct

The security concern relating to the guideline 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 or sensitive information.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. One is potentially applicable in this case:

(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 individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

- (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;
- (2) any disruptive, violent, or other inappropriate behavior;
- (3) a pattern of dishonesty or rule violations; and
- (4) evidence of significant misuse of Government or other employer's time or resources;

Applicant has received two letters of reprimand, one for inappropriate behavior. The evidence is sufficient to raise this disqualifying condition.

AG ¶ 17 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 17. None of them apply. Applicant appears to still be in denial as to his inappropriate behavior. This allegation is found against Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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(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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F, G, and E in my whole-person analysis. Applicant appears to be performing well at his job. (AppX A.)

However, overall, 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 Financial Considerations, Alcohol Consumption, and Personal Conduct security concerns.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a.~1.d.:	Against Applicant
Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraph 2.a.~2.e:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraphs 3.a. and 3.b.:	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 continue Applicant's national security eligibility. Eligibility for access to classified information is denied.

Richard A. Cefola
Administrative Judge