



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-06814

Appearances

For Government: Alison O'Connell, Esq., Department Counsel

For Applicant: *Pro se*

12/19/2017

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied. Applicant mitigated personal conduct security concerns; however he did not present sufficient information to mitigate criminal conduct and financial considerations security concerns.

Statement of the Case

On May 23, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for a position with a defense contractor. Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM) on June 24, 2013. (Government Exhibit (GX) 2, Personal Subject Interview (PSI)). After reviewing the results of the background investigation, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On November 27, 2015, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for criminal conduct under Guideline J, personal conduct under Guideline E, and financial considerations under Guideline F. These actions were taken under Executive Order 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).

Applicant answered the SOR on December 15, 2015. He admitted five and denied three of the eight allegations of criminal conduct. Since the personal conduct allegations are cross-alleged from the criminal conduct allegations, Applicant admitted the personal conduct allegation. He admitted one and denied four of the financial considerations allegations.

Department Counsel was prepared to proceed on October 18, 2016, and I was assigned the case on February 15, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on July 20, 2017, for a hearing on August 16, 2017. I convened the hearing as scheduled. The Government offered 15 exhibits that I marked and admitted into the record without objection as Government exhibits (GX) 1 through 15. Applicant testified and offered one exhibit that I marked and admitted into the record without objection as Applicant Exhibits (AX) A.

I received an e-mail from Applicant on October 3, 2017, which I marked and admitted as AX B. Applicant's e-mail apologized for s his conduct at the hearing. I did not consider Applicant's conduct as egregious or improper. I will consider the remorseful sentiments raised by Applicant in the e-mail in my decision. DOHA received the transcript of the hearing (Tr.) on August 24, 2017.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact. Applicant is 38 years old. He received his General Education Diploma (GED) in 1997. He never married, but he has a 14-year-old child. Applicant was unemployed from December 2002 until September 2011 except for two weeks in September 2006. He supported himself from disability payments. He is not presently employed, but he has a job offer as a desktop technician from a defense contractor. He never served in the military. Applicant presented a letter of thanks from a brigadier general for his support and work on a program he worked in 2002. (Tr. 21-23, 62-63; GX 1, e-QIP, dated September May 22, 2013; GX 2, Personal Subject Interview, dated June 24, 2013; AX A, Letter, dated January 25, 2002))

The SOR alleges the following criminal conduct for Applicant; he was charged with and found guilty in July 1998 of theft of items less than \$300 in value (SOR 1.a); he was charged with and found guilty of sale or distribution of marijuana in February 2002 (SOR 1.b); a charge of possession of marijuana was nolle prossed in July 2005, (SOR 1.c); he was charged with and found guilty of driving under revocation/ suspension in June 2006 (SOR 1.d); charges of sale and distribution of marijuana and distribution of a controlled substance were nolle prossed in July 2010 (SOR 1.e); he was found guilty of reckless driving and driving on a suspended license in June 2011 (SOR 1.f); he was found guilty of possession of marijuana in June 2011, (SOR 1.g); and the charges of

operating an unregistered vehicle and displaying vehicle license plates belonging to another vehicle were nolle prossed in February 2013 (SOR 1.h). The same conduct is also charged in one allegation of personal conduct under SOR 2.a.

The government introduced court and Federal Bureau of Investigation (FBI) records to verify the criminal charges. (GX 3 to GX 10) Applicant pled not guilty to the theft charge at SOR 1.a. He represented himself at trial. Applicant testified he went to a store to purchase a corn cob pipe, but discovered he did not have his wallet. He was going to the door of the store to signal a friend in his car that he needed his wallet. As he exited the door with the pipe in his hand, he was apprehended by store security. He was found guilty of a misdemeanor level theft offense and paid a fine. (Tr. 24-26; GX 3. Case Information)

Applicant admitted in the PSI and at the hearing that he sold marijuana to a friend in February 2002. (SOR 1.b) He had been selling marijuana for about six months to make money. The police searched his house and discovered more marijuana. He was sentenced to three years confinement with all but 60 days suspended. He was placed on probation for three years. He successfully completed the period of probation. (Tr. 26-33; GX 2, PSI, dated June 24, 2013)

Applicant was given a pack of cigarettes by a friend. The pack was in Applicant's car. Police stopped Applicant for speeding. A search of his car revealed marijuana in the cigarette pack. Applicant was arrested for possession of marijuana, but the case was not prosecuted. (SOR 1.c; Tr. 33-37; GX 2, PSI, dated June 14, 2013)

Applicant admitted he was charged with driving on a revoked/suspended driver's license in June 2006. He believes his driver's license was revoked because he failed to pay a fine. He did not appear at the hearing, but was found guilty in absentia. He does not remember the punishment he received. (Tr. 37-38; GX 2, PSI, dated June 14, 2013 at 2)

Applicant admits he was arrested for sale and distribution of marijuana and unauthorized distribution of controlled paraphernalia in July 2010. (SOR 1.e) Police apprehended Applicant and two acquaintances as they sat in a car in front of the friend's house. Police searched the car and found marijuana and a glass pipe in the car. The case was nolle prossed. Applicant believes the case was dropped because of wrongful police action. (Tr. 38-41; GX 2, PSI, dated June 14, 2013, at 2)

Applicant admits he was stopped for speeding and driving on a suspended license in June 2011. (SOR 1.f) He was arrested and taken to the local jail. When he was searched on in-processing, marijuana was found on his person. (SOR 1.g) He did not know the marijuana was on his person, but he pled guilty to a misdemeanor possession charge to avoid a felony conviction. He was sentenced to 30 days confinement. (Tr.41-46)

Applicant admits he was arrested for operating an unregistered vehicle, and displaying license plates issued to another car. (SOR 1.h) However, the dealership where he purchased the car inadvertently provided the wrong car information on the registration form. The charge was nolle prossed. (Tr. 46-47)

The SOR also alleges, and credit bureau reports (GX 11, dated June 10, 2015; GX 12, dated October 29, 2014; GX 13, dated June 1, 2013; GX 14, dated January 5, 2012) confirm the following delinquent debts for Applicant: a judgment for a bank for \$4,439 (SOR 3.a); a credit card debt placed for collection for \$1,415 (SOR 3.b); a credit card account placed for collection for \$1,927 (SOR 3.c), and a credit card account placed for collection for \$2,152 (SOR 3.d). The SOR alleges that Applicant filed a Chapter 7 bankruptcy in 2004 that was discharged in 2004. (SOR 3.e)

Applicant stated that he received a traumatic brain injury when he fell down a flight of stairs in February 2002. He remained in the hospital for over 70 days incurring large medical bills. He was required to file bankruptcy because of the medical debts. (SOR 3.e) The debts were discharged in bankruptcy in 2004. (Tr. 51-54)

Applicant has been unemployed, except for three or four months, for the last ten years. He receives about \$1,800 a month in disability. He looked for work when unemployed and had many interviews. He believes that he was not offered a job because of his felony drug possession conviction. (Tr. 54-57)

Applicant testified that he received fraudulent money orders as payment for two computers he sold. He deposited the money orders in his bank account and withdrew the funds. When the money orders did not clear the bank, he owed the bank for the funds he withdrew. The debt eventually grew because of penalties and interest. The bank obtained a judgment against Applicant. He has not made any payments to the bank on the debt. (Tr. 57-61)

Applicant admitted at the hearing that he incurred the credit card debts at SOR 3.b, 3.c, and 3.d because he was foolish and irresponsible in his management of the credit card accounts. The allegation of fraud was raised only as to the debt at SOR 3.a. Applicant has not made any payment on these credit card accounts. (Tr. 61-62)

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 must be considered 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. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The Applicant has the ultimate burden of persuasion for 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 the Applicant may deliberately or inadvertently fail to protect or protect classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Analysis

Criminal Conduct

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 (AG ¶ 30). Applicant’s arrests and/or convictions from 1998 until 2011 for sale and possession of marijuana, driving on a suspended license, reckless driving, and operating an unregistered vehicle and displaying license plates belonging to another vehicle raises security concerns and questions about Applicant’s judgment, reliability, trustworthiness, and his ability and willingness to comply with laws, rules, and regulations. The following Criminal Conduct Disqualifying Conditions under AG ¶ 31 are of concern:

- (a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in

combination cast doubt on the individual's judgment, reliability, and trustworthiness; and

(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.

The court and arrest records as well as Applicant's admissions are competent evidence of Applicant's arrests and convictions. The available records establish a pattern of offenses that are minor but in combination cast doubt on Applicant's judgment, reliability, and trustworthiness. Once a concern is raised regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. After the Government presents evidence raising criminal conduct security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. Applicant stated that his past criminal conduct is not a security concern.

I considered the following Criminal Conduct Mitigating Conditions under AG ¶ 32:

(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;

(b) the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(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.

The mitigating conditions do not apply. The evidence shows that Applicant has established a pattern of criminal activity over a long period. While Applicant admitted the details of some of his criminal activities, he denies others. However, the evidence is sufficient to find that he committed the offenses charged. There is no evidence of remorse for his criminal conduct or successful rehabilitation. Applicant was involved in possession and sale of illegal drugs only six years ago in 2011. Applicant has not demonstrated the maturity and life style to conclude that his involvement in illegal drugs is unlikely to recur. There is not a significant passage of time, since the last reported criminal activity occurred in 2013, to demonstrate changed circumstances or conduct sufficient to indicate a finding of reform or rehabilitation. The evidence of a pattern of

criminal activity is sufficient to raise issues of Applicant's current reliability, trustworthiness, or good judgment.

Personal Conduct

Conduct involving questionable judgment, lack of candor, dishonesty, or willingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. (AG ¶ 15)

Applicant's criminal conduct including theft and the possession and sale of marijuana raises the following disqualifying condition under AG ¶ 16

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any 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 individual may not properly safeguard classified or sensitive information.

As noted above, Applicant's criminal conduct and sale and possession of marijuana over an extended period of time shows lack of judgment, untrustworthiness, and an unwillingness to comply with rules and regulations. It leads to the conclusions that his lack of candor shows that he may not properly safeguard classified or sensitive information. SOR ¶ 2.a cross-alleges under the personal conduct guideline, the same conduct alleged under the criminal conduct guideline. All of Applicant's conduct causing a security concern under SOR ¶ 2.a is explicitly covered under Guideline J, and is sufficient to warrant revocation of his security clearance. Guideline E concerns constitute a duplication of the concerns under Guideline J, and accordingly, personal conduct security concerns in SOR ¶ 2.a is found for Applicant

Financial Considerations

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 a person's reliability, trustworthiness, and ability to protect classified or sensitive information. (AG ¶ 18) The financial security concern is broader than the possibility that an individual might knowingly compromise classified information to raise money. It encompasses concerns about an individual's responsibility, trustworthiness, and good judgment. Security clearance adjudications are based on an evaluation of an individual's reliability and trustworthiness. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to meet his financial obligations. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is required to manage his or her finances in such a way as to meet financial obligations.

Credit reports and Applicant's admissions reveal that he has a judgment against him and extensive delinquent credit card debts that have not been resolved. The record shows that Applicant used credit cards to purchase items he could not afford. He admits that his use of credit cards was irresponsible and foolish, and indicates mismanagement. The evidence is sufficient to raise security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19:

- (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.

The information raises issues about Applicant's self-control, judgment, and willingness and ability to meet his financial obligations. Bankruptcy is a legal and permissible means of resolving debt. Medical debts caused Applicant's bankruptcy in 2004. I find for Applicant as to SOR 3.e. Once the Government has established an adverse financial issue, the Applicant has the responsibility to refute or mitigate the issue.

I considered the following Financial Consideration Mitigating Conditions under 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;
- (b) the conditions that resulted in the financial problems were largely beyond the person's control (e.g. loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving 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; and

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

The mitigating conditions do not apply. Applicant's debts are numerous, recent, and were not incurred under circumstances making recurrence unlikely. The debts consist of an unpaid judgment and normal consumer credit card debts. Applicant is unemployed and had significant periods of unemployment. His only source of income is a disability payment. He does not have sufficient income to pay significant credit card debt. Applicant did not present any evidence of financial counseling.

Accordingly, he has not established a good-faith effort to pay his debts. There is no clear evidence that his debt problems have been resolved, and his finances are under control. Overall, he has not provided evidence or proof that he acted with reason and responsibility towards his finances. His living beyond his means, and his late and limited efforts to resolve his financial problems are a strong indication that he may not protect and safeguard classified information. Applicant did not present any information of payments made on these debts. In sum, Applicant did not present sufficient information to mitigate financial security concerns.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and the relevant circumstances. An 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 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 considered Applicant's e-mail in which he stated the he has changed since he was 22 years old. He knows he can perform most jobs. He realizes he made reckless, foolish, and dumb choices in the past but they should not affect his present life.

Applicant did not present adequate information to establish that sufficient time has passed without criminal activity to show he has been rehabilitated. Applicant's

history shows that he is not reliable and trustworthy and that he does not have the ability to protect classified information. The record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate criminal conduct and financial considerations security concerns. Personal conduct security concerns are mitigated as a duplication.

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 J:	AGAINST APPLICANT
Subparagraphs 1.a – 1.h:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3; Guideline F:	AGAINST APPLICANT
Subparagraph 3.a – 3.d:	Against Applicant
Subparagraph 3.e:	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 interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

THOMAS M. CREAN
Administrative Judge