



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



In the matter of:

[NAME REDACTED]

Applicant for Security Clearance

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ISCR Case No. 15-06881

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

11/08/2017

Decision

MALONE, Matthew E., Administrative Judge:

Applicant did not mitigate the security concerns raised by information about his illegal drug involvement, his personal conduct, and his financial problems. Accordingly, his request for a security clearance is denied.

Statement of the Case

On April 25, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for his employment with a defense contractor. Based on the results of the ensuing background investigation, Department of Defense (DOD) adjudicators could not determine that it is

clearly consistent with the interests of national security for Applicant to have a security clearance.¹

On October 3, 2016, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns under the adjudicative guidelines² for drug involvement and substance misuse (Guideline H), personal conduct (Guideline E), and financial considerations (Guideline F). Applicant timely responded to the SOR (Answer), provided supporting documents, and requested a hearing. I received the case on May 1, 2017, and I convened the requested hearing by video teleconference on July 11, 2017. Department Counsel proffered four items identified as Government Exhibits (Gx.) 1 – 4, which I admitted without objection.³ Applicant testified in his own behalf and did not present any additional documents. I received a transcript of the hearing (Tr.) on July 19, 2017.

Findings of Fact

Under Guideline H, the Government alleged that in March 2014, Applicant was charged with possession of marijuana and drug paraphernalia (SOR 1.a). Applicant admitted this allegation.

Under Guideline E, the Government alleged that in December 2005, Applicant was charged with assault on a female (SOR 2.a); that in August 2006, he was arrested and charged with driving while intoxicated (DWI), speeding and civil revocation of a driver's license (SOR 2.b). In addition, the Government alleged that in August 2010, he was charged with speeding and driving without a license (SOR 2.c). The Government further alleged that in September 2010, Applicant was charged with driving without a license and having no car insurance (SOR 2.d); and that in June 2012, he was charged with speed competition (street racing), reckless driving, and wanton disregard (SOR 2.e). Applicant admitted all or part of these allegations, with explanations.

Also under Guideline E, the Government alleged that Applicant deliberately made multiple false official statements through his answers to questions in his e-QIP. Specifically, the Government alleged Applicant made false statements regarding his arrest record by failing to disclose the arrests or charges outlined in SOR 1.a and 2.c –

¹ Required by Executive Order 10865, as amended, and by DOD Directive 5220.6 (Directive), as amended.

² At the time they issued the SOR, DOD adjudicators applied the adjudicative guidelines implemented by the Department of Defense on September 1, 2006. On December 10, 2016, the Director of National Intelligence issued a new version of the adjudicative guidelines, to be effective for all adjudications on or after June 8, 2017. In this decision, I have considered and applied the new adjudicative guidelines. My decision in this case would have been the same under either version.

³ A copy of Department Counsel's "discovery letter" and a list of the Government's exhibits also are included as Hearing Exhibits (Hx.) I and II, respectively.

2.e (SOR 2.f); and by failing to disclose the drug and alcohol-related arrests alleged at SOR 1.a and 2.b (SOR 2.g). The Government also alleged he deliberately failed to disclose that he used marijuana in the seven years preceding the e-QIP (SOR 2.h). The Government further alleged under this guideline that Applicant deliberately omitted from his e-QIP a state tax debt alleged at SOR 3.h (SOR 2.i); a debt being enforced by civil judgment (SOR 2.j); and all of the delinquent debts alleged at SOR 3.a – 3.j (SOR 2.k). Applicant generally admitted providing inaccurate answers in his e-QIP but denied any intent to mislead or deceive the Government.

As to the SOR 2.f and 2.g allegations that Applicant deliberately omitted the drug-related arrest listed in SOR 1.a, a review of his e-QIP shows that, in fact, he listed that arrest. Accordingly, as to SOR 2.f, I have only considered the significance of his allegedly deliberate omissions of the charges addressed in SOR 2.c – 2.e. As to SOR 2.g, I have only considered the significance of his allegedly deliberate omission of the charges addressed in SOR 2.b.

Finally, under Guideline F, the Government alleged that Applicant owed at least \$25,385.77 for ten delinquent or past-due debts (SOR 3.a – 3.j). The allegation of debt at SOR 3.e did not list an amount owed. At the hearing, Department Counsel moved to amend the SOR to delete SOR 3.e, 3.g, and 3.j as duplicative of the debts alleged at SOR 3.i, 3.f, and 3.d, respectively. Without objection, I granted the motion. The total amount of debt at issue from the remaining seven allegations is \$25,827.77. Applicant denied SOR 3.a, but admitted the remaining Guideline F allegations.

Applicant's admissions in response to the SOR establish those allegations as facts. After a review of the record evidence as a whole, I make the following additional findings of fact.

Applicant is 34 years old and works as a mechanic for a defense contractor. He has held his current position since April 2014. On at least three occasions since 2011, Applicant has worked at overseas job sites. His only period of unemployment since 2011 occurred between January and April 2013, after Applicant had returned from an overseas assignment. At hearing, he testified that he had held security clearances for his work overseas and that he had submitted security clearance applications before his April 2014 e-QIP. (Gx. 1; Tr. 79 - 81)

Applicant and his wife were married in August 2007, but separated in May 2009. Together they have a 12-year-old child, who lives with her mother. Applicant and his wife have yet to finalize a divorce. Applicant also has a 3-year-old daughter by a former girlfriend, now deceased. The child lives with Applicant. (Gx. 1; Tr. 34 - 35)

Applicant used marijuana from the time he was in eighth grade until around the time of his younger child's birth in 2014. After a traffic stop in March 2014, police found a small amount of marijuana and drug paraphernalia in Applicant's car. Applicant had been using marijuana not long before the police pulled him over. He disclosed the drug

charges in his e-QIP the following month, but he did not disclose that he had used marijuana just a few week before. (Answer; Gx. 1; Gx. 2; Tr. 42 – 43, 78 – 79)

Regarding Applicant's finances, the Government's exhibits as well as Applicant's admissions support the allegations under SOR 3. In September 2013, Applicant had to find work because the defense contractor for whom he was working at the time lost the contract to which Applicant was assigned. From September 2013 until April 2014, he earned about half the hourly wage he had earned for the previous two years. As a result, Applicant lost a car to repossession (SOR 3.i), could not pay a state tax bill for the 2012 tax year (SOR 3.h), failed to pay two cell phone accounts (SOR 3.b and 3.f), and accrued delinquent credit accounts (SOR 3.a, 3.c, and 3.d). Applicant paid off his tax bill through involuntary wage garnishments that ended in October 2016. After receiving the SOR, Applicant entered into repayment agreements for the debts at SOR 3.b, 3.f, and 3.d. He did not present information that supports his claims that he has been adhering to those repayment plans. (Answer; Gx. 2 and 3; Tr. 58 – 67, 74 – 76)

As to Applicant's current finances, he acknowledges that he is struggling to make ends meet. He has applied for a part-time retail job, but has only been able to supplement his full-time job income with odd jobs on the side for cash. He estimates that those side jobs account for whatever money he has remaining each month after expenses. (Tr. 35, 68, 70 – 72, 76)

Applicant averred that when he submitted security clearance applications before his April 2014 e-QIP, he disclosed much of the adverse information about arrests and traffic charges produced by Department Counsel in this case. However, in explaining why he omitted that information from his April 2014 e-QIP, he claimed that he misunderstood the questions. When asked to explain why he did not disclose any of the debts alleged under SOR 3, he stated that he forgot about certain debts, such as the civil judgment alleged at SOR 3.a. Alternatively, he repeated his claims that he did not understand the questions about his finances. (Answer; Tr. 54 – 60)

Applicant acknowledged his prior arrests. The assault charge at SOR 2.a was the result of an argument with his estranged wife turned physical. Applicant pushed his wife out of the way after she complained about him going out that evening. The charge was later dropped at his wife's behest. (Answer; Gx. 2; Tr. 43 – 44)

As to the charges of speeding, reckless driving, racing, operating without a license or insurance, and so forth, Applicant attributed his conduct to being young and foolish. While he denied the speeding charge associated with his 2006 arrest for DWI, Applicant admitted drinking and driving but did not recall the judicial outcome of that charge. At hearing, Applicant disclosed that he had received another speeding ticket and that, in January 2017, he again was arrested for DWI. He had been drinking heavily for about 36 hours before he was arrested with a .28 blood alcohol content (BAC). At the time of his hearing in this case, Applicant was awaiting trial and had been told by his

lawyer that he could possibly go to jail for 30 days. Applicant also had not yet told his employer about his latest DWI arrest. (Tr. 46 – 52, 86 – 87)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁴ and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). Decisions must also reflect consideration of the factors listed in ¶ 2(d) of the guidelines. Commonly referred to as the “whole-person” concept, those factors are:

(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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁵ for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.⁶

A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her

⁴ See Directive. 6.3.

⁵ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁶ See *Egan*, 484 U.S. at 528, 531.

own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government.⁷

Analysis

Drug Involvement and Substance Misuse

The security concern about drug involvement appears at AG ¶ 24, as follows:

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. *Controlled substance* means any "controlled substance" as defined in 21 U.S.C. 802. *Substance misuse* is the generic term adopted in this guideline to describe any of the behaviors listed above.

As alleged at SOR 1.a, the only applicable disqualifying condition is at AG ¶ 25(c) (*illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia*). I also considered AG ¶ 25(f) (*any illegal drug use while granted access to classified information or holding a sensitive position*); however, although Applicant acknowledged using marijuana the day he was arrested for possession, available information does not establish that Applicant had a security clearance at the time.

I also considered the pertinent mitigating conditions under AG ¶ 26 and conclude that none can be applied here. Applicant’s arrest occurred more than three years ago and, as a drug-related charge, appears isolated. Nonetheless, information was developed at his hearing regarding his use of marijuana from adolescence into his early 30s, a previously unreported DWI less than a year before his hearing, and what I conclude (as discussed under Guideline E) to be disqualifying defects in his judgment and reliability. That information precludes a finding that Applicant’s drug-related arrest does not cast doubt on his current reliability, trustworthiness, or good judgment.⁸ Applicant did not mitigate the security concern under this guideline.

⁷ See *Egan*; AG ¶ 2(b).

⁸ See AG ¶ 26(a).

Financial Considerations

The Government's information reasonably raised a security concern about Applicant's finances. That concern appears at AG ¶ 18, as follows:

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.

Available information documented the SOR allegations that Applicant owes a significant level of past-due or delinquent debt. The same information shows Applicant's debts have not been addressed absent some form of external enforcement, such as the civil judgment for the debt at SOR 3.a, or the wage garnishment for the state tax debt at SOR 3.h. More specifically, the record as a whole requires application of the disqualifying conditions at AG ¶¶ 19(a) (*inability to satisfy debts*); 19(b) (*unwillingness to satisfy debts regardless of the ability to do so*); and 19(c) (*a history of not meeting financial obligations*).

I have also considered the following pertinent AG ¶ 20 mitigating conditions:

(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; and

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

None of these mitigating conditions apply. Applicant's debts are recent and ongoing. In response to the SOR, Applicant presented information, dated after the SOR was issued, showing he has repayment agreements with the creditors at SOR 3.b, 3.d, and 3.f. Applicant did not establish that he has been making the required payments since entering into those agreements. He also did not establish that the cause of his financial problems was beyond his control. Granted, between April 2013 and April 2014, he was briefly unemployed, then employed at a reduced rate than before. Nonetheless, Applicant has been at his current, better paying job for more than three years, but did not act on his debts until after receiving the SOR. Finally, Applicant has not sought any professional financial counseling or other assistance in addressing his financial problems. Applicant did not mitigate the security concerns raised by the Government's information.

Personal Conduct

The Government alleged that Applicant deliberately tried to hide adverse information about his use of marijuana, his arrest record, and his finances when he submitted his e-QIP. Such information raises the following security concern addressed at 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. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

To be disqualifying, Applicant's omissions and false statements to investigators must be intentional. If Applicant intended to make such false statements, the disqualifying condition at AG ¶ 16(a) would apply:

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 national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant denied the gravamen of the Government's concern; namely, that he intended to mislead or deceive the Government about relevant information material to a proper assessment of his suitability for access to classified information. Nonetheless, I conclude from all available information probative of this issue that Applicant intentionally intended to mislead the Government by his omissions. His explanations of mistake are simply not plausible and I found his testimony on these issues to be not credible. Applicant claimed he had disclosed his arrests and other information in prior applications; yet, he also claimed he was confused by or did not understand those same questions in his current e-QIP. Most glaring was his omission of his marijuana use, having smoked marijuana only a few weeks before submitting the e-QIP. Applicant's lack of credibility on these matters undermines his claims that he was not aware of his various delinquent debts. AG ¶ 16(a) applies.

The Government's security concerns about Applicant's personal conduct also are based on sufficient reliable information about Applicant's record of illegal activity, such as a DWI and an arrest for domestic assault. Further, the record shows Applicant has multiple and serious traffic violations. This information now also includes a recent arrest for a second DWI. All of the foregoing requires application of the disqualifying condition at AG ¶ 17(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 individual may not properly safeguard classified or sensitive information.

I also considered the following AG ¶ 17 mitigating conditions:

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

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a

person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(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; and

(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 contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Applicant did not establish that he promptly made any attempt to correct his omissions. He also testified that he had completed prior security clearance applications. By reasonable inference, he knew he had to disclose his arrests, his drug use, and his financial problems. His disclosure of his drug-related arrest in March 2014 was not sufficient to put the Government on notice as to the broad range of adverse information in his background regarding his financial problems and his disregard for laws and regulations. Finally, there is nothing minor about his decision to withhold such information. The Government has a compelling and fundamental interest in ensuring that anyone applying for a security clearance is at all times candid about their background information. Applicant also did not establish that his overall history of misconduct – DWI, traffic infractions, etc. – is likely to change. A recent DWI and another speeding ticket undermine any claim that his adverse personal conduct is no longer a security concern. All of the foregoing precludes a finding that Applicant has mitigated the security concerns about his false statements or his disregard for rules and regulations.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(d). Applicant did not present any information regarding his job performance or reputation in the workplace and community. He also did not establish that his record of misconduct and his financial problems would change anytime soon. The record evidence as a whole leaves me with significant doubts about Applicant's suitability for access to classified information. Because protection of the national interest is the principal focus of these adjudications, those doubts must be resolved against the granting of eligibility for such access.

Formal Findings

Formal findings 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 H:	AGAINST APPLICANT
Subparagraphs 1.a:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a – 2.k:	Against Applicant
Paragraph 3, Guideline F:	AGAINST APPLICANT
Subparagraphs 3.a – 3.d, 3.f, 3.h, 3.i:	Against Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the interests of national security for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

MATTHEW E. MALONE
Administrative Judge