



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



In the matter of:

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) ISCR Case No. 16-00381
)
)

Applicant for Security Clearance)

Appearances

For Government: Benjamin Dorsey, Esq., Department Counsel
For Applicant: *Pro se*

01/12/2018

Decision

BENSON, Pamela C., Administrative Judge:

Applicant currently owes a substantial child support arrearage that he accumulated over the years and either could not, or chose not to, repay or successfully dispute. Applicant was also charged with 11 crimes from 1989 to 2017, to include several charges of violent conduct. One count of criminal conduct occurred after the SOR was issued and is pending jury trial. He failed to demonstrate rehabilitation and overall use of good judgment. The resulting security concerns were not mitigated. Based upon a review of the testimony, pleadings and exhibits, national security eligibility is denied.

History of Case

On March 17, 2015, Applicant completed and signed his security clearance application (SCA). On December 12, 2016, the Department of Defense (DoD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DoD Directive 5220.6, *Defense Industrial Personnel Security for Determining Eligibility for Access to Classified Information*, effective on September 1,

2006 (Sept. 1, 2006 AGs). The SOR set forth security concerns arising under the financial considerations guideline and criminal conduct guideline.¹

On January 4, 2017, Applicant responded to the SOR, and he requested a hearing before an administrative judge. He submitted two character reference letters with his answer, which I marked as Applicant's Exhibit (AE) A and B. On March 21, 2017, Department Counsel requested to amend the SOR by adding eight allegations under paragraph 2 (SOR ¶¶ 2.c through 2.j). In addition, Department Counsel requested adding paragraph 3 containing one allegation (SOR ¶ 3.a.) under Guideline E (Personal Conduct). Applicant did not respond to the request to amend the SOR. On October 11, 2017, the Defense Office of Hearings and Appeals (DOHA) issued a notice of Hearing, setting the hearing for November 1, 2017. On October 17, 2017, the case was assigned to me.

During the hearing, Department Counsel asked that his request to amend the SOR be granted. Applicant had not answered the amended SOR, which was sent to him in March 2017, at his former address, and again on October 12, 2017, at his current address. Applicant stated that he had received the SOR amendment as well as the exhibits from Department Counsel in October 2017. After determining that sufficient time had passed for Applicant to answer the SOR amendment, I granted the Government's request to amend the SOR. Applicant then admitted ¶¶ 2.d. through 2.i, and denied ¶¶ 2.c, 2.j and 3.a. Department Counsel offered Government Exhibits (GE) 1 through 11 into evidence, which were admitted without objection. Applicant testified, and offered one additional document (AE C) into evidence during the hearing. AE A, B and C were entered into evidence without objection. I granted Applicant's request to leave the record open until December 1, 2017. DOHA received the hearing transcript (Tr.) on November 8, 2017. I allowed Applicant to submit his post-hearing documents after the deadline. On January 8, 2018, he submitted AE D through P, which were admitted without objection. The record closed on January 9, 2018.

Findings of Fact

Having thoroughly considered the evidence in the record, including Applicant's admissions, I make the following findings of fact: Applicant is 46 years old, never married, and the father of four children, ages 23, 13, 11 and 7. He completed two years of college, but did not earn a degree. He received some computer programing certifications. He is employed by a DoD contractor since January 2015. He currently holds a security clearance that he has continuously held since approximately 2008. (Tr. 36-40; AE C)

The SOR alleges three past-due child support accounts totaling about \$15,500, and a Chapter 7 bankruptcy case filed in February 2014, with liabilities totaling over \$200,000. The debtor was discharged in May 2014. (GE 7) Applicant admitted all of the

¹ I considered the previous AG, effective September 1, 2006, as well as the new AG, effective June 8, 2017. My decision would be the same if the case was considered under the previous AG.

Guideline F allegations. SOR paragraph 2 (Criminal Conduct) alleged that he was arrested on ten occasions from 1989 to 2010. He denied SOR ¶¶ 2.c and 2.j, and admitted ¶¶ 2.a., 2.b, and 2.d through 2.i. SOR paragraph 3 (Personal Conduct) alleges that all of the arrests cited under Paragraph 2 are also security concerns under Guideline E. Applicant denied ¶ 3.a.

Applicant states his financial issues were the result of a low-paying job, overwhelming child-support payments, and a period of unemployment. He has worked consistently since January 2007, with a period of unemployment from September 2014 to January 2015. He testified that he currently pays approximately \$1,900 per month for his three minor children, and he is left with about a \$2,600 monthly net remainder. He also testified that he was awarded a settlement of approximately \$10,000 in 2015 that he saves for emergency. He does not have a written budget, and other than taking the required credit counseling from filing bankruptcy in 2014, he has never enrolled in any other form of credit counseling. He testified that his child-support arrearage listed in the SOR would not be reduced from the amounts listed in the SOR, despite paying \$1,900 every month. (Tr. 40-49, 51; 54; AE C, E, F, G)

Applicant provided no budget information from which to predict his future solvency. The documentation he did provide actually showed that he owed over \$19,000 in delinquent child support. (AE E, F and G) He claims that the total outstanding amount listed on AE G, a printout from the state's child support enforcement agency, was incorrect. He did not obtain a corrected record from this agency or provide other evidence to substantiate his claim.

Applicant was arrested in 1989 and charged with unlawful possession and two counts of unlawful manufacture of a controlled substance. (¶ 2.j) He was arrested in 1990 and charged with distribution of cocaine. (¶ 2.i) He was arrested again in 1990 and charged with theft: \$300 plus value. (¶ 2.h) In 1992, Applicant was arrested for three counts of assault with intent to murder, two counts of reckless endangerment, and three counts with use of a handgun while committing a crime. (¶ 2.g) He was arrested again in 1992 and charged with malicious destruction of property. (¶ 2.f) In January 1993, he was charged with trespassing on private property. (¶ 2.e) He was arrested in February 1993 and charged with battery. (¶ 2.d) He was arrested in 2001 and charged with two counts of assault, one count of theft, and one count of unlawful use of a livestock vehicle. (¶ 2.c) In September 2010 he was arrested for violation of a protective order, and he was arrested in October 2010 and charged with assault, reckless endangerment, and malicious destruction of property. (¶¶ 2.a., 2.b) The criminal arrests are supported by his admissions and GE 9, 10 and 11.

During the hearing, Applicant testified that he was arrested again in about June 2017 for malicious destruction of property – value \$1,000. He stated that he was found guilty of this charge and sentenced to jail for six months and ten days, with six months suspended. He was also ordered to make restitution to his ex-girlfriend. He denied being on probation, and he stated that he had appealed the court's ruling. Documentation provided by Applicant showed that a jury trial for his June 2017 charge

is set for the end of this month. (AE K) The documentation provided is incomplete as well as insufficient to show that the case was appealed by Applicant, or that any charge in this case had been dismissed. (Tr. 57- 63; AE K, L) Although this information was not alleged under Guideline J, I have considered it as probative to Applicant's showing of rehabilitation.

Applicant stated in his January 2017 answer that his criminal charges were mistakes that occurred in the past, and with counseling and support, he has been able to change and become a better person. He is involved with speaking to young men and women about making good life choices and domestic violence issues. He provided a letter from a former ex-girlfriend indicating that since 2010, she had observed positive changes in the Applicant. She stated that they now have a healthy co-parenting relationship with their son. In addition, a letter from Applicant's licensed clinical therapist dated May 13, 2011, stated that Applicant had attended weekly counseling sessions for the past eight months to address anger management and domestic violence issues. She stated that Applicant had learned to identify triggers, and how to use better strategies for leading a violence-free lifestyle. Applicant also had several character references stating that he is dependable, hard-working, and an asset to the community. (AE A, B, H, I and J)

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."

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 says that 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 Exec. Or. 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* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline F: Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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. . . .

AG ¶ 19 describes four conditions that could raise security concerns and may be disqualifying in this case:

- (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.

Applicant incurred numerous delinquent debts, totaling more than \$200,000. He filed for Chapter 7 bankruptcy in 2014 while he was employed full time. The debts included in his bankruptcy were discharged in 2014, yet his child support arrearage to

his three minor children remains significant and not fully resolved. Therefore, substantial delinquent debt remains, concerning which he demonstrated neither a long track record of progress toward resolution nor a legitimate basis for dispute. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate the resulting security concerns.

The guideline includes six conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged financial difficulties:

- (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, 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; 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 continues to owe a substantial child-support arrearage that he incurred over the years to his three minor children. His only period of unemployment occurred from September 2014 to January 2015. Applicant provided documentation of the court-ordered payments taken from his paycheck for the past six months. The documents provided by Applicant actually showed more money owed for the child-support arrearage than what was listed in the SOR. Applicant marked on AE G that the amount recorded was incorrect, but he failed to supply a corrected record from the state. Accordingly, Applicant failed to establish complete mitigation of security concerns arising from his financial irresponsibility under any of these conditions.

Guideline J: Criminal Conduct

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 30, which reads in pertinent part:

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.

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 31, and the following two are potentially applicable:

(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, or 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.

Applicant has a long pattern of criminal conduct. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from criminal conduct. The following mitigating conditions under AG ¶ 32 are potentially applicable:

(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;

(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.

There is evidence of additional misconduct since Applicant was charged with a criminal offense in June 2017, after the SOR was issued. With his long pattern of arrests over the years, I am not satisfied that his criminal conduct is unlikely to recur. AG ¶ 32(a) does not apply. Applicant's most recent charge is pending jury trial and is unresolved. He failed to provide evidence to show that he is fully rehabilitated. AG ¶ 32(d) does not apply.

Guideline E: Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

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. . . .

Applicant's criminal conduct was addressed under the specific guideline, as cited above. The same issues were cross-alleged under the personal conduct guideline. No specific personal conduct allegations were raised beyond what was raised under the appropriate guidelines. I have previously addressed the criminal conduct and to do so under personal conduct is redundant and unnecessary. I find against Applicant regarding personal conduct concerns.

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 pertinent facts and circumstances surrounding this case. Applicant is a mature adult, who is accountable for the decisions that led to a substantial child-support arrearage he did not pay in a timely manner. He continues to owe substantial delinquent child support debt that he accumulated over the years and either could not, or chose not to, repay or successfully dispute. He has engaged in criminal conduct repeatedly over the years, and he was charged again for similar criminal conduct after he answered his SOR in January 2017. This criminal charge is still pending. A past coworker, family and friends

provided strong character references. However, there is insufficient evidence of rehabilitation, or an indication that his criminal behavior is unlikely to recur. Overall, the evidence creates significant doubt as to Applicant's eligibility and suitability for a security clearance. He failed to meet his burden to mitigate the security concerns arising under the guidelines for financial considerations, criminal conduct, and personal conduct.

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 through 1.d:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraphs 2.a through 2.j:	Against Applicant
Paragraph 3, Guideline F:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information or to occupy a sensitive position. National security eligibility is denied.

Pamela C. Benson
Administrative Judge