



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



In the matter of:

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) ISCR Case No. 16-00425
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Applicant for Security Clearance

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: Leah M. Peer, Esq.; Dena M. Acosta, Esq.

May 17, 2018

Decision

MOGUL, Martin H., Administrative Judge:

Statement of the Case

On November 7, 2016, in accordance with Department of Defense (DoD) Directive 5220.6, as amended (Directive), the DoD issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guidelines J, G, E, and F.¹ The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

On December 8, 2016, Applicant submitted a written reply to the SOR, and requested the case be decided after a hearing before an administrative judge. (RSOR.) The case was assigned to this administrative judge on March 7, 2017. The Defense

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

Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 19, 2017, scheduling the hearing for June 6, 2017. The hearing was convened as scheduled.

At the hearing, the Government offered Exhibits 1 through 12 which were admitted without objection. Applicant testified on his own behalf and presented six documents, which were also admitted without objection as Exhibits A through F.

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 national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Findings of Fact

After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is 51 years old. He is single, and he has two biological children and two stepchildren. He attended two years of college. He served in the United States Navy from 1990 to 1996, and he received an Honorable Discharge. Applicant has been employed by a defense contractor since 2013 as a Fiber Optics Technician, and he seeks a DoD security clearance in connection with his employment in the defense sector. (Tr at 25-30.)

Guideline J – Criminal Conduct

The SOR lists seven allegations, (1.a. through 1.g.) regarding Criminal Conduct, under Adjudicative Guideline J.:

1.a. It is alleged in the SOR that Applicant was arrested in July 1996, and charged with Felony Driving Under the Influence of Alcohol (DUI). Applicant admitted this allegation in his RSOR. At the hearing, he testified that the conviction was reduced from a felony to a misdemeanor, and he believed he satisfied all of the requirements from this conviction. He attended court ordered Alcoholics Anonymous (AA) meetings, but he did not get too much from them. He eventually attended another religious program. (Tr at 37-41.)

1.b. It is alleged in the SOR that Applicant was arrested in March 2002, and charged with DUI Alcohol/Drugs and Driving While Having a Measurable Blood Alcohol. Applicant admitted this allegation in his RSOR. At the hearing, he testified that he did not recall the incident, and while it occurred during a time when he was going through a contentious divorce, he did not want to blame the incident on anything other than a “bad decision.” As a result of the conviction he attended court ordered classes and AA, but they did not ultimately improve his conduct. (Tr at 41-44.)

1.c. It is alleged in the SOR that Applicant was arrested in November 2005, and charged with DUI Alcohol/Drugs and Driving While Having a Measurable Blood Alcohol. Applicant admitted this allegation in his RSOR. He discussed the fact that he was

having problems with his father having dementia, which may have contributed to his conduct. While he did attend more court mandated classes and AA meetings, they did not have an overall positive effect on him. (Tr at 42-50.)

1.d. It is alleged in the SOR that Applicant was arrested in August 2010, and charged with Drunk in Public. Applicant admitted this allegation in his RSOR. Applicant testified that he did not remember this event. (Tr at 50-51.)

1.e. It is alleged in the SOR that Applicant was arrested in April 2011, and charged with Trespass and Drunk in Public. Applicant admitted this allegation in his RSOR. Applicant testified that this incident involved an issue with him trying to recover his belongings from a house, which he had previously shared with the girlfriend. Because Applicant had consumed alcohol, a police officer issued him a citation and took him to a detention center to prevent him from driving in an intoxicated state. (Tr at 74-83.)

1.f. It is alleged in the SOR that Applicant was arrested in August 2011, and charged with DUI Alcohol/Drugs and Driving While Having a Measurable Blood Alcohol. Applicant admitted this allegation in his RSOR. Applicant testified that as a result of this arrest and conviction, he attended an 18-month alcohol abuse class and some additional classes. He completed this class in July 2014, and he stopped drinking during this class. He also began attending a church program during this time, and he became more involved with athletics. He believed he was turning his life around during this time. (Tr at 52-56.)

1.g. It is alleged in the SOR that Applicant was arrested in May 2013, and charged with Transportation of Controlled Substance, Possession of Controlled Substance, Possession of Unlawful Paraphernalia, Under the Influence of Controlled Substance, and Driving on a Suspended License. Applicant admitted this allegation in his RSOR. Applicant testified that to his knowledge all of the drug charges from this incident were dismissed. He claimed only the charge of Driving on a Suspended License was found against him, and he had not been aware that his license had been suspended. (Tr at 56-58.) Exhibit 3, a report from the FBI, shows that Applicant was convicted of Driving a Vehicle with a Suspended License and DUI; Special Violation, for which he was ordered to pay a fine and serve 3 years probation.

Applicant also testified that this incident occurred when someone he knew left Methamphetamines in Applicant's car, and then left the vehicle to search for someone else. According to Applicant, when he was approached by a police officer, Applicant put the drugs in his mouth to hide them, and this action made him high. Applicant claimed he then took the drugs out of his mouth and then gave them to the officer, and told him that the drugs he was hiding in his mouth and making him high were not his. At that point the police officer arrested him and took him to the station. (Tr at 116-121.)

Applicant also testified that all of the probation requirements had been met and the fines had been paid, as a result of the allegations in subparagraphs 1.a. through 1.g.

Applicant also attended a class called Reboot in 2013, which further helped him to get his life together. (Tr at 59-60.)

Guideline G – Alcohol Consumption

The SOR lists one allegation (2.a.) regarding Alcohol Consumption, under Adjudicative Guideline G.:

2.a. It is alleged in the SOR that Applicant's conduct alleged in paragraph 1, above, constitutes Alcohol Consumption concerns. Applicant testified that he first consumed alcohol around 1987 at the end of his high school years. He was ordered in 1993, while he was in the Navy, to attend a six month in-house treatment program. Applicant conceded that his history of alcohol problems covered a period from his first consumption in 1987 to 2013. Despite all of his arrests and convictions, and classes and AA meetings advising him to stop drinking alcohol, he could not explain why he did not make a decision to abstain from alcohol consumption until 2013. (Tr at 108-112.)

Guideline E - Personal Conduct

The SOR lists one allegation (3.a.) regarding Personal Conduct, under Adjudicative Guideline E.:

3.a. It is alleged in the SOR that Applicant's conduct alleged in paragraph 1, above, constitutes Personal Conduct concerns.

Guideline F, Financial Considerations

The SOR lists three allegations (3.a. through 3.c.) regarding financial difficulties, specifically overdue debts, under Adjudicative Guideline F. The debts will be discussed below in the order they were listed on the SOR:

4.a. This overdue debt is cited in the SOR for a delinquent account in the amount of \$1,814. In his RSOR Applicant wrote that this debt was paid. At the hearing, Applicant claimed that this debt had been paid. (Tr at 65-66.) Exhibit F establishes that this debt has been resolved.

4.b. This overdue debt is cited in the SOR for a delinquent account in the amount of \$553. Applicant admitted this debt in his RSOR. At the hearing, Applicant claimed that this debt had been paid. (Tr at 66-67.) Exhibit F establishes that this debt has been resolved.

4.c. This overdue debt is cited in the SOR for a delinquent account in the amount of \$3,249. In his RSOR Applicant wrote that this debt was paid. At the hearing, Applicant claimed that this debt had been paid. (Tr at 66-67.) Exhibit F establishes that this debt has been resolved.

Mitigation

Applicant submitted a number of documents in mitigation, which I have reviewed carefully. They include but are not limited to: Proof of completion by Applicant of an 18-month Multiple Offender Program (Exhibit A); a certificate of completion of a Reboot Workshop program (Exhibit B); a copy of a Guard card and Licensure Registration card (Exhibit C); nine letters of recommendation submitted on Applicant's behalf (Exhibit D); and certificates Applicant has earned (Exhibit E).

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 are to be used 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, administrative judges apply the guidelines 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. According to AG ¶ 2(a), 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 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.

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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies for access to classified information 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 access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order (EO) 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline J, Criminal Conduct

The security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 30:

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 ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following is potentially applicable:

- (a) (evidence . . . of criminal conduct, regardless of whether the individual was formally charged, prosecuted or convicted.

Because of the nature of the criminal offenses discussed above, including seven arrests and conviction over a period of many years, the aforementioned disqualifying condition has been established.

AG ¶ 32 describes conditions that could mitigate a security concern. Applicant’s criminal past continues to cast doubt on his trustworthiness and judgment. I also considered Applicant’s credibility regarding his testimony about his arrest and conviction in 2013. I find his assertion that a friend left drugs in his car, and Applicant hid them from the police by putting them in his mouth, which ultimately made him high, does not have the ring of truth and is just impossible to accept. His history of many years of criminal conduct together with this story makes his credibility extremely suspect. Because Applicant’s last arrest and conviction occurred in 2013 and his criminal conduct covered a long period of time, I do not find that any Criminal Conduct mitigating condition is applicable under AG ¶ 32. I, therefore, find Guideline J 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 of the failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness.

The guideline notes several conditions that could raise security concerns under AG ¶ 22. After reviewing Applicant's long history of alcohol use and abuse, including at least six alcohol related incidents, I find that the evidence is sufficient to raise disqualifying condition (a) in this case.

- (a) alcohol related incidents away from work, such as driving while under the influence, . . . 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.

AG ¶ 23 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 23. Because of the long history of alcohol abuse evidence introduced and the evidence regarding criminal conduct relating to alcohol consumption for many years, I find that none of the mitigating factors is applicable in this case, and I find against Applicant under Guideline G.

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. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. The following is potentially applicable:

- (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.

Because of Applicant's history of alcohol abuse and criminal conduct I find that AG ¶ 16 (c) is applicable as a disqualifying condition in this case:

AG ¶ 17 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 17. Because of the factors discussed above under the Guidelines for Criminal Conduct and Alcohol Consumption I find there is still concern that such conduct will recur and it continues to cast doubt on Applicant's

current reliability, trustworthiness and judgment. I find that no mitigating factor under AG ¶ 17 is applicable in this case.

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:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has had several delinquent debts for a number of years which were not resolved. The evidence is sufficient to raise disqualifying conditions (a) and (c) in this case.

AG ¶ 20 provides conditions that could mitigate security concerns. I considered the 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 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.

Since the evidence has established Applicant has now resolved his delinquent debts, I find he has demonstrated that he addressed his debts in a responsible manner. Mitigation under AG ¶ 20(d) has been established. Guideline F is found for Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for 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 facts and circumstances surrounding this case. I have incorporated my comments under Guidelines G, J, E, and F in my whole-person analysis. Overall, the record evidence leaves me with significant questions and doubts as to Applicant's eligibility and

suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns under the whole-person concept.

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 J:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant
Paragraph 4, Guideline F:	FOR APPLICANT
Subparagraph 4.a:	For Applicant
Subparagraph 4.b:	For Applicant
Subparagraph 4.c:	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 national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Martin H. Mogul
Administrative Judge