



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



In the matter of:)
)
) ISCR Case No. 16-03043
)
Applicant for Security Clearance)

Appearances

For Government: Andrew Henderson, Esq., Department Counsel
For Applicant: *Pro se*

12/07/2017

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the drug involvement and substance misuse concerns, but she did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On November 4, 2016, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H and Guideline F. DOD acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG).¹

¹ I decided this case using the AG implemented by DOD on June 8, 2017. However, I also considered this case under the previous version of the AG implemented on September 1, 2006, and my conclusions are the same using either set of AG.

Applicant answered the SOR on December 16, 2016, and requested a hearing before an administrative judge. The case was assigned to me on February 15, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 28, 2017, and the hearing was convened as scheduled on June 22, 2017. The Government offered exhibits (GE) 1 through 7, which were admitted into evidence without objection. The Government's exhibit index was marked as hearing exhibit (HE) I. I took administrative notice of the DOD urinalysis testing cutoff levels at the request of Department Counsel and without objection from Applicant (HE II and III). Applicant testified, but did not produce any documentary evidence. The record was held open for Applicant to submit additional information. She failed to submit any additional evidence. DOHA received the hearing transcript (Tr.) on July 6, 2017.

Findings of Fact

Applicant admitted all the SOR allegations, with explanations. Her admissions are incorporated as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 25-year-old employee of a defense contractor. She has worked in her current position since February 2015. She has a bachelor's degree. She is single and has one child.²

The SOR alleges Applicant used marijuana while holding a security clearance in April 2013. It also alleged she was delinquent on five charged-off, collection, or repossession accounts in the approximate amount of \$185,204. Applicant's January 2015 security clearance application (SCA), her November 2015 interview with a defense investigator, and credit reports from February 2015, August 2016, and January 2017 establish the delinquent debts.³

From July 2010 until October 2013, Applicant was a cadet at the U.S. Air Force Academy (AFA). She held a security clearance during her time as a cadet. In April 2013, she was in her third academic year at the AFA. After returning to the AFA from a weekend trip with friends, Applicant was selected for a random urinalysis test. Her test result came back showing a positive result for the metabolite in marijuana. As a result of the positive test for marijuana, Applicant received a letter of reprimand and was disenrolled as a cadet at the AFA. On October 15, 2013, the Secretary of the Air Force also ordered that Applicant reimburse the Government for the cost of her academic education at the AFA. The cost of the education was determined to be approximately \$136,000, and is the delinquent debt listed in SOR ¶ 2.a.⁴

² Tr. at 5; GE 1.

³ GE 1-2, 5-7.

⁴ Tr. at 17-18; GE 1-5.

Applicant maintained that any use of marijuana on her part was unknowing. She explained that she and some friends were going for a ski weekend in the mountains, but stopped off to attend a concert beforehand. She was separated from her friends and went to a bar where she met some local residents. She went home with one of the persons she met at the bar and stayed the night. She does not remember much from that night and thinks she may have been drugged. The next morning she called her friends to pick her up so they could continue on their ski weekend. Before her friends arrived, she was hungry and ate some pound cake that was sitting on the counter. She believed that this cake may have contained marijuana because she claimed that she has never intentionally used marijuana in the past.⁵

Applicant has not taken any action to resolve the five delinquent debts. The AFA recoupment debt (SOR ¶ 2.a) is the subject of an involuntary garnishment order against Applicant's current pay check at the rate of \$140 per week. The delinquent debt listed in SOR ¶ 2.b was a loan she received as a cadet that she was unable to pay after her disenrollment. She has not made payments on this debt, nor made arrangements to pay in the future. The debt listed in SOR ¶ 2.c resulted from an involuntary repossession of her vehicle. She has not made any arrangements to pay this debt. SOR ¶¶ 2.d (credit card) and 2.e (medical) both remain unpaid and no payment arrangements have been made.⁶

Since her disenrollment in October 2014, Applicant completed her bachelor's degree, had a baby, and started her job with her current employer. Her gross yearly salary is approximately \$42,000. She shares rent with her parents. She is not receiving child support. She has not used marijuana since her positive urinalysis in 2013.⁷

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, 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(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,

⁵ Tr. at 26-36; GE 2.

⁶ Tr. at 40-43; GE 7.

⁷ Tr. at 19-21, 24.

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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion to obtain 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that 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 H, Drug Involvement and Substance Misuse

AG ¶ 24 expresses the security concern pertaining to drug involvement and substance abuse:

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.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying. Those that are potentially applicable in this case include:

- (a) any substance misuse;
- (b) testing positive for an illegal drug; and
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

Applicant tested positive for marijuana in April 2013, while a cadet at the AFA and while holding a security clearance. I find that all the above disqualifying conditions apply.

AG ¶ 26 provides conditions that could mitigate security concerns. One potentially applies in this case:

- (a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment.

Applicant's use of marijuana was infrequent and occurred over three years ago. There is no evidence of more recent use. Given her responsibilities as a single parent and sole wage-earner, any future marijuana use is unlikely to recur. AG ¶ 26(a) applies.

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern for financial considerations:

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. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (a) inability to satisfy debts; and

(c) a history of not meeting financial obligations;

Applicant has delinquent debts that remain unpaid or unresolved. I find all the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

(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.

Applicant's debts are recent and multiple, and her inaction in addressing her debts (exclusive of the involuntary wage garnishment) shows a lack of reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

Applicant's misconduct resulted in her large debt, not circumstances beyond her control. Applicant has not taken responsible action to address her debts. AG ¶ 20(b) is not applicable.

There is no evidence Applicant received financial counseling. Given the unpaid status of all the debts, Applicant's financial problems are not under control. Evidence of good-faith efforts to pay or resolve the remaining debts is lacking, since an involuntary garnishment does not amount to a good faith effort to pay. AG ¶¶ 20(c) and 20(d) do not apply.

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 the 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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guidelines H and F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

I considered Applicant's federal contractor service, her service as a cadet, and the circumstances surrounding her drug use, and indebtedness. However, I also considered that she was disenrolled from the AFA due to misconduct and she has made no effort to resolve her debts. She has not established a meaningful track record of debt management, which causes me to question her ability to resolve her debts.

Overall, 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 mitigated the drug involvement and substance misuse concerns, but she did not mitigate the financial considerations security concerns.

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 H:	FOR APPLICANT
Subparagraphs: 1.a – 1.b:	For Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraphs: 2.a – 2.e:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge