



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



In the matter of:

ISCR Case No. 17-01502

Applicant for Security Clearance

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel

For Applicant: Pro Se

June 15, 2018

Decision

MOGUL, Martin H., Administrative Judge:

Statement of the Case

On June 1, 2017, 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 F and E.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.

Applicant replied to the SOR on July 7, 2017, and requested a hearing before an administrative judge. (RSOR.) The case was assigned to me on September 11, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 3, 2017, setting the hearing for November 8, 2017. The hearing was convened as scheduled on that date.

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.

At the hearing, the Government offered Exhibits 1 through 5, which were admitted without objection. Applicant testified on his own behalf and presented no documentary evidence. The record was left open until November 22, 2017, for receipt of additional documentation. While additional documents were not received initially in a timely manner, after inquiry from Department Counsel, Applicant did submit some documents which he contended he had previously sent. These have been identified and entered into evidence collectively as Exhibit A. DOHA received the transcript of the hearing (TR) on November 16, 2017. Based upon a review of the pleadings, exhibits, and the testimony of Applicant, eligibility for access to classified information is denied.

Findings of Fact

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

Applicant is 32 years old. He is married for the second time, and he has two stepchildren. He received a Master's degree in Business in 2017 and a Bachelor's degree in 2016. Applicant served on active duty with the United States Marine Corps from 2004 to 2012, when he received an Honorable Discharge. He is currently employed as a Systems Analyst by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector. (Tr at 5-6, 19-22, 28.)

Guideline F, Financial Considerations

The SOR lists 14 allegations (1.a. through 1.n.) regarding financial difficulties, specifically overdue debts totaling approximately \$23,000, under Adjudicative Guideline F. Applicant admitted all of the allegations in his RSOR. At the hearing, Applicant testified that the debt listed on the SOR as 1.m., in the amount of \$430, has been paid. (Tr at 23.) Applicant submitted no documentation at the hearing or after the hearing to establish that this debt or any of the other SOR debts has been resolved or reduced.

Applicant testified that a major reason for his financial problems was that his first wife abandoned their marriage and left him with all of the bills, which he was able to pay during their marriage with both of their incomes, but he could not pay the debts by himself. Applicant also stated that with the exception of SOR debt 1.m., he has not resolved or reduced any of his other delinquent debts. His current plan is to contact the creditors and negotiate settlements with them. At this time he has \$5,000 saved, and he wants to start resolving debt within the next year. He has not received any kind of financial counseling to help him with his debt. (Tr at 31-36.)

Guideline E, Personal Conduct

The SOR lists four allegations (2.a. through 2.d.) regarding Personal Conduct, under Adjudicative Guideline E. Applicant admitted all of the allegations in his RSOR.

2.a. The SOR alleges that Applicant deliberately falsified material facts on an Electronic Questionnaires for Investigations Processing (e-QIP) that he executed on February 25, 2016. Section 26 asked whether: in the last seven years, Applicant had a judgment entered against him; had bills or debts turned over to a collection agency; had any account or credit card suspended, charged off or cancelled for failing to pay as agreed; had been over 120 days delinquent on any debts; or was currently over 120 days delinquent on any debt. Applicant answered, "No," to these questions. It is alleged that Applicant deliberately failed to disclose that information concerning his finances and overdue debts, as set forth in subparagraph 1.a. through 1.n., above.

During his testimony, Applicant could not provide a reasonable explanation for why he did not list any of his delinquent debts. He contended that he never meant to mislead the Government about his finances; he simply did so in error. However while missing some of the debts could be possible, I do not find that leaving out all of the debts is a legitimate or reasonable explanation. (Tr at 23-25, 36-37.)

2.b. The SOR alleges that Applicant also deliberately falsified material facts on the e-QIP that he executed on February 25, 2016. Section 22 asked whether: Applicant had ever been charged with an offense involving alcohol or drugs. Applicant did not disclose on this e-QIP the arrests, which are set in subparagraphs 2.c. and 2.d., below. At the hearing, Applicant had no explanation for his failure to include the DUI arrests on his e-QIP. (Tr at 25-26, 49-50.)

2.c. The SOR alleges that Applicant was arrested and charged on or about January 18, 2015, with Driving Under the Influence of Alcohol (DUI). Applicant testified that he was found guilty for this DUI, and he was required to attend an 18 month alcohol related course, pay a \$2,000 fine and complete 4 days of community service. While Applicant has paid the fine and completed the community service, at the time of the hearing, he had not completed all of the required class attendance. Finally, he is still on 10 year probation for this DUI conviction, which is scheduled to end in 2025. (Tr at 26, 45-47.)

2.d. The SOR alleges that Applicant was arrested and charged on or about March 3, 2012, with DUI. Applicant testified that he was ultimately found guilty for this DUI and was found to have an alcohol blood level of .01. He was assigned to attend a first offender program, and before he could complete the program, he was arrested for the second DUI in 2015. (Tr at 42-45.)

Applicant contends that he has not consumed alcohol since June 2017, and he attends Alcoholics Anonymous meetings twice a week. (Tr at 47-48.) Applicant submitted some Certificates of Commendation he had received during his military duties. (Exhibit A.)

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 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, 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 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. Applicant was alleged to have substantial delinquent debts. The evidence is sufficient to raise disqualifying conditions (a), (b), and (c) as applicable 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;

AG ¶ 20 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 20. As reviewed above, evidence was introduced to establish that Applicant's financial problems occurred as a result of his divorce from his first wife. Therefore, I find that mitigating factor AG ¶ 20 (b), is potentially applicable in this case.

- (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.

However, since Applicant has not established that he has resolved or reduced any of the delinquent debts, nor contacted any of the creditors to attempt to resolve his debts, I do not find that he has acted responsibly under the circumstances. Nor do I find

that any of the other mitigating factors are applicable in this case. Therefore, I find against Applicant under Guideline F.

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. Because Applicant failed to include the information about his delinquent debts and his two DUIs on his e-QIP, I find that the evidence is sufficient to raise disqualifying condition (a) in this case. Also since he was arrested, charged and convicted for DUIs in 2012 and 2015, and he will be on probation until 2025, I also find that disqualifying condition (c) is applicable in this case.

(a) 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;

(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;

AG ¶ 17 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 17, but I did not find that any of them are applicable in this case. I find against Applicant under Guideline E.

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 F and E 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 Financial Considerations and Personal Conduct 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 F:	AGAINST APPLICANT
Subparagraph 1.a. - 1.n.:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a. – 2.d.:	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 national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Martin H. Mogul
Administrative Judge