



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-02591

Appearances

For Government: Andrea M. Corrales, Esq., Department Counsel
For Applicant: *Pro se*

10/18/2018

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On August 14, 2017, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline J (Criminal Conduct) and Guideline F (Financial Considerations).¹ In responses signed on November 24, 2017, and December 28, 2017, respectively, he admitted all allegations without comment. He also requested a determination based on the written record in lieu of a hearing. On January 31, 2018, the Government issued a File of Relevant Material (FORM) with six attachments ("Items"). Applicant did not respond to the FORM. The case was assigned to me on October 11, 2018. Based on my review of the record as a whole, I find Applicant failed to mitigate both criminal conduct and financial considerations security concerns.

Findings of Fact

Applicant is a 31-year-old male who has worked for the same defense contractor since about August 2016. He attended some college-level courses. He experienced

¹ The action was taken under Executive Order 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) effective within the DOD on or after June 8, 2017.

periods of unemployment from January 2016 to March 2016 and also from August 2011 and October 2012, after serving as an active reservist in the United States military from March 2006 until his August 2011 honorable discharge.² Applicant divorced in early 2014. He is the father of two pre-teen children.

In late July 2014, Applicant received a phone call at work from his estranged wife's boyfriend's mother, who was concerned because she had not heard from her son. (FORM, Item 10, at 6) Applicant left work to check on his wife because she had previously had problems with that boyfriend. Upon arrival at his estranged wife's residence, Applicant was greeted at the door by the boyfriend, who had a "smirk" on his face. (FORM, Item 10, at 6) The boyfriend's attitude provoked Applicant and an argument ensued, with Applicant initiating a physical altercation by assaulting the man.

The situation between the men escalated. Applicant pulled out a firearm from his pants and held it to the boyfriend's cheek.³ Applicant's estranged wife appeared and told Applicant to let her boyfriend go. Applicant put his firearm back into his pants. The wife told Applicant to go, then proceeded to call the local police department. Applicant left and later discovered a police report had been filed against him. Ultimately, charges were brought against Applicant for brandishing a firearm and for assault and battery.

In April 2015, Applicant pled guilty to, and was convicted of, the noted misdemeanor charges. (FORM, Item 3, at 36 of 56; FORM, Item 10, at 7) Applicant avoided jail time and was sentenced to five years of unsupervised probation. He also paid the sum of \$800, as ordered. That month he received counseling, where it was determined he was depressed. (FORM, Item 10, at 7) There is no evidence that Applicant has completed probation early.

Also at issue in the SOR are 16 delinquent debts, ranging in sums from \$48 to \$8,247, and amounting to approximately \$34,000. Applicant admitted responsibility for these debts, which included multiple delinquent accounts for student loans and about \$1,200 for delinquent federal taxes for tax year 2015. Several of these delinquent accounts were disclosed in Applicant's October 2016 SCA and discussed during a subject interview conducted between February 2017 and March 2017. No documentary evidence reflecting any effort toward addressing any of the delinquent debts at issue was offered. There is no information regarding Applicant's present financial situation, and no documentary evidence reflecting that he has received financial counseling.

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

² In his October 2016 security clearance application (SCA), Applicant wrote that he was an inactive reservist. (FORM, Item 3, at 21 of 56); *but see* Personal Subject Interview. (FORM, Item 10, at 5)

³ Applicant had a state license to carry a concealed weapon. (FORM, Item 10, at 6)

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. These guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's adjudicative goal is a fair, impartial, and commonsense decision. This 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, in making a decision.

The protection of the national security is the paramount consideration. Any doubt concerning personnel being considered for access to classified information will be resolved in favor of national security. In reaching this decision, I have only drawn conclusions that are reasonable, logical, and based on the evidence provided.

Under the Directive, the Government must present evidence to establish controverted facts alleged in the SOR. 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 seeking access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. This relationship transcends normal duty hours. Decisions include consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such 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.

Analysis

Guideline J – Criminal Conduct

The concern raised by 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.

Applicant admits he pled guilty in April 2015 to, and was convicted of, brandishing a firearm, and assault and battery. He is currently under probation for those misdemeanor crimes. Such facts and admissions are sufficient to raise disqualifying condition:

AG ¶ 31(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; and

AG ¶ 31(c): individual is currently on parole or probation.

The following mitigating conditions are potentially relevant:

AG ¶ 32(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, and

AG ¶ 32(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.

The incident at issue and Applicant's subsequent conviction both occurred within the past five years, and his probationary period is still in effect. Specifics regarding Applicant's current personal life and his relationship with his ex-wife are unavailable. It is unknown whether Applicant continues to carry a concealed weapon. The results of Applicant's 2015 counseling are unknown. In short, there is insufficient documentary evidence upon which a determination can be made as to whether such criminal misconduct might recur, or whether Applicant is prepared to comport his behavior moving forward. Similarly, there is insufficient evidence regarding any rehabilitative efforts Applicant has endeavored since the incident at issue. Consequently, neither AG ¶ 32(a) nor AG ¶ 32(d) apply.

Guideline F – Financial Conditions

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that failure or inability 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.

Here, Applicant admitted all allegations related to delinquent debts, which amount to approximately \$34,000. Included in this delinquent sum is an unpaid federal tax balance of about \$1,200 for tax year 2015. These facts are sufficient to invoke financial considerations disqualifying conditions:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the inability to do so;

AG ¶ 19(c): a history of not meeting financial obligations; and

AG ¶ 19(f): failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Five conditions could mitigate the finance related security concerns posed:

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;

AG ¶ 20(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;

AG ¶ 20(c): the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit counseling service, and there are clear indications that the problem is being resolved or is under control;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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.

The multiple debts at issue remain unaddressed, including an unpaid tax liability balance for tax year 2015. Applicant offered scant evidence as to the creation of these delinquent accounts. While there is evidence of a brief period of unemployment in early 2016, a more notable period of unemployment following his honorable discharge from the military that lasted from August 2011 to October 2012, and a 2014 divorce that followed an apparently protracted estrangement, Applicant provided little insight into whether he behaved reasonably at the time in terms of his finances.

Moreover, there is no documentary evidence reflecting an effort to work with Applicant's creditors, including the Internal Revenue Service (IRS), or pursue financial counseling. The minimal available information is of negligible help in assessing Applicant's financial situation or mitigating related security concerns. Therefore, AG ¶ 20(a)-(g) 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 relevant circumstances. The administrative judge should consider the adjudicative process factors listed in the AG. Under AG ¶ 2(a), the need to utilize a "whole-person" evaluation is set forth. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I hereby incorporate my comments under the relevant guidelines herein.

Applicant is a 31-year-old Tool Room HAZMAT Manager who has worked for the same defense contractor for just over two years. He has attended some college. Applicant had a brief period of unemployment from January 2016 to March 2016 and, more significantly, another such period from August 2011 and October 2012, after his honorable discharge from the military in August 2011. After a protracted estrangement, Applicant and his ex-wife divorced in 2014. They have two minor children.

In this case, Applicant admitted all SOR allegations without comment and did not respond to the FORM. Consequently, the written record upon which he prefers judgment to be based is scant. Applicant pled guilty to brandishing a firearm, as well as assault and battery, in 2015. Applicant's conduct, as described in the record, appears to have been well out of proportion to the slight he perceived. Today, Applicant remains on probation for the misdemeanors at issue.

Applicant's financial situation still raises security concerns. Nearly \$34,000 in delinquent debts, including student loans and tax liability from tax year 2015, remain unaddressed and unpaid. Applicant admits responsibility for these debts, but offered no documentary evidence reflecting any efforts to address any of the delinquent accounts at issue. Moreover, there is no information describing his present financial situation or capabilities. Finally, he offered neither evidence of financial counseling, nor a description of a plan to address this substantial delinquent debt in the future. Taken together, Applicant failed to provide sufficient information to mitigate either criminal conduct or financial considerations security concerns, Clearance denied.

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 J:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1p:	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 a security clearance. Eligibility for access to classified information is denied.

Arthur E. Marshall, Jr.
Administrative Judge