



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



In the matter of:)
)
) ISCR Case No. 17-04388
)
Applicant for Security Clearance)

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: *Pro se*

04/20/2018

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the financial considerations security concerns, but he did not mitigate the personal conduct security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On January 19, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E (personal conduct) and F (financial considerations). Applicant responded to the SOR on February 2, 2018, and requested a hearing before an administrative judge.

The case was assigned to me on March 8, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 12, 2018, scheduling the hearing for March 26, 2018. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibit (AE) A, which was admitted without objection. DOHA received the hearing transcript (Tr.) on April 3, 2018.

Findings of Fact

Applicant is a 32-year-old employee of a defense contractor. He has worked for his current employer since April 2017. He was placed on paid-leave status in January 2018 pending the outcome of his security clearance adjudication. He went into unpaid-leave status in March 2018. He has an associate's degree, which was awarded in 2011. He is married with two children.¹

Applicant has a checkered work history, with periods of unemployment, disciplinary issues, quitting jobs after short periods, and terminations. He was released from a job in 2007 after the truck he was driving was damaged. Applicant stated that he was required to deliver materials through an unpaved area when the truck bottomed out and was damaged.²

Applicant was terminated from a position in 2008 after an allegation of sexual harassment. Applicant stated that he was injured on the job and was out of work for several months. He denies sexually harassing anyone, but he admitted that he may have had an attendance problem. He believes the true reason he was terminated was the work-related injury. He cites as proof the fact that he received unemployment compensation, which he would not have received if he was terminated for cause.³

Applicant was terminated from his employment in 2010 after he failed a drug test. Applicant explained that he injured his wrist on the job. He went to the emergency room where he was prescribed an over-the-counter painkiller. He later contacted the emergency room, but they would not prescribe anything stronger. He was in severe pain and he took one of his wife's Lortabs⁴ for the pain. Because he was injured on the job, he had to take a drug test the next day. He received workers' compensation due to his on-the-job injury. He testified that he was unaware that he could not take his wife's prescription, and that he will not do so again.⁵

Applicant worked in a juvenile detention facility for about three months in 2012. He stated that one of the juveniles lied and reported that Applicant body-slammed him to the floor. Applicant admitted that he had some attendance and language issues, but he vehemently denied physically abusing the juvenile. He stated that the juvenile started cussing at him, and Applicant told the juvenile to get the f*** back in his cell. There were cameras in the facility, but he was unsure if they were working at the time. He stated that the state takes a hard line on physical abuse by a detention officer, and he would

¹ Tr. at 30, 60-61; GE 1, 2.

² Tr. at 26-27, 40-44, 49-55, 89-90; Applicant's response to SOR; GE 1, 2.

³ Tr. at 24-25, 31-37; Applicant's response to SOR; GE 1, 2.

⁴ Lortab is a trade name for hydrocodone, an opioid cough suppressant and narcotic painkiller. Hydrocodone is a Schedule II controlled substance. See https://www.deadiversion.usdoj.gov/drug_chem_info/hydrocodone.pdf.

⁵ Tr. at 17-18, 23-24, 32, 37-39; Applicant's response to SOR; GE 1, 2.

have been criminally charged if he had assaulted the juvenile. He stated the juvenile lied in order to get rid of him. It is unclear whether Applicant was terminated or resigned under the threat of termination. He testified that six months after his employment ended, the detention facility attempted to rehire him.⁶

Applicant worked as armed security on an air facility from about April 2016 to February 2017. Part of his duties involved opening a heavy gate. Another worker closed the gate suddenly and almost caught Applicant's fingers, which could have cut them off. Applicant told the other employee to slow down. The employee came over to Applicant, "confronted [him] in [his] face, cussing at [him], and backing [him] into a corner." Applicant told the employee to "f*** off." Applicant was suspended with pay for a week. He was then transferred to a different post that paid less. He quit the job rather than take the pay-cut.⁷

Applicant acknowledged his employment issues, and that he "messed up with attendance issues in [his] entire career of ten years," but he stated that he has learned from the experiences and has "grown up." His current job is in information technology, which is more suited to him than armed security. A security clearance will help him attain his ultimate goal, which is to obtain a stable job with the government.⁸

The SOR alleges 15 unpaid medical debts totaling about \$6,400 and 3 miscellaneous delinquent debts totaling about \$3,600. Applicant had significant medical problems, and he admitted owing all the medical debts. He had explanations for the three non-medical debts. All of the debts are listed on at least one credit report.⁹

Applicant denied responsibility for the \$1,704 debt alleged in SOR ¶ 1.a. He stated that he returned a laptop computer two days after purchasing it. He settled the debt for \$340, which he paid in March 2018. He is in discussions with the creditor for the \$763 debt to an apartment complex as alleged in SOR ¶ 1.c. He stated that amount owed is incorrect, and they have agreed to reduce it to \$300. He denied responsibility for the \$1,199 telecommunications debt alleged in SOR ¶ 1.i. He is in contact with the company collecting the debt and is in the process of working out a settlement. He has not received formal financial counseling, but he read books and viewed financial DVDs that he received from his church. He stated that he intends to resolve all his remaining debts using the "snowball" method endorsed by a noted financial expert.¹⁰

Applicant submitted a Questionnaire for National Security Positions (SF 86) in July 2016. He reported his spotty work record and that he failed a drug test. He did not report any issues under the financial questions. He denied intentionally falsifying the

⁶ Tr. at 19-20, 44-48; Applicant's response to SOR; GE 1, 2.

⁷ Tr. at 20-23, 55-60; GE 1, 2.

⁸ Tr. at 37, 86, 89.

⁹ Tr. at 48-49, 71; Applicant's response to SOR; GE 4, 5.

¹⁰ Tr. at 27, 29, 63-71, 85-86; Applicant's response to SOR; AE A.

financial questions on the SF 86. He stated that he was unaware of the extent of his financial problems and that he was only given a short time to complete the SF 86.¹¹

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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 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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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."

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." The applicant 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

¹¹ Tr. at 23, 70-71; Applicant's response to SOR; GE 1.

Section 7 of 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 E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(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 security clearance 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; and

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, 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. This includes, but is not limited to, consideration of:

(2) any disruptive, violent, or other inappropriate behavior.

Applicant reported derogatory information on his SF 86, but he did not report any issues under the financial questions. He denied intentionally falsifying the financial questions on the SF 86. He stated that he was unaware of the extent of his financial problems and that he was only given a short time to complete the SF 86. There is insufficient evidence for a determination that Applicant intentionally falsified the SF 86 when he did not report any issues under the financial questions. AG ¶ 16(a) has not been established. SOR ¶ 1.h is concluded for Applicant.

SOR ¶ 1.d alleges that Applicant used the prescription medication Lortab without a prescription. SOR ¶¶ 1.c and 1.e both allege that Applicant was terminated from what is the same employment after he failed a drug urinalysis. He failed the drug urinalysis because of taking the Lortab. The three allegations essentially allege the same personal conduct, which is Applicant's use of the Lortab. When the same conduct is alleged more than once in the SOR under the same guideline, the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005). SOR ¶¶ 1.d and 1.e are concluded for Applicant.

Since 2007, Applicant had problems on five different jobs. He was terminated or disciplined for:

2007 - damaging a company truck (SOR ¶ 1.g)

2008 - sexual harassment (SOR ¶ 1.f)

2010 - failed drug test (SOR ¶ 1.c)

2012 - mistreatment of a juvenile resident (SOR ¶ 1.b)

2017 - verbal abuse toward another employee (SOR ¶ 1.a)

Those actions reflect questionable judgment and an unwillingness to comply with rules and regulations. AG ¶¶ 16(c) and 16(d) are applicable.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(f) the information was unsubstantiated or from a source of questionable reliability.

Applicant denied sexually harassing another employee, and he denied physically abusing the juvenile. He cites as proof that he received unemployment compensation, which would not have occurred had he been terminated for cause for sexual harassment, and that he would have been arrested if he physically abused the juvenile. There is no independent evidence, such as employment records, that Applicant committed the conduct. Nonetheless, Applicant admitted taking the Lortab without a prescription; he admitted using profanity toward the juvenile and the other employee at the gate; and he admitted having attendance issues throughout the last ten years.¹² Applicant's conduct continues to cast doubt on his current reliability, trustworthiness, and good judgment. I find that personal conduct concerns remain despite the presence of some mitigation.

Guideline F, Financial Considerations

The security concern 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

¹² While not completely analogous because the case involved criminal conduct instead of personal conduct, the Appeal Board addressed multiple claims of factual innocence in ISCR Case 14-02567 at 6 (App. Bd. Oct. 5, 2015):

. . . the Judge's uncritical acceptance of Applicant's claims of factual innocence failed to address the extent to which a reasonable person could find Applicant's presentation to have been merely self-serving. It also failed to address the extent to which repeated arrests and charges might be attributable less to bad fortune than to Applicant's own conscious and willful behavior. See, e.g., ISCR Case No. 13-00596 at 5-6 (App. Bd. Jun. 26, 2015) (Multiple nature of criminal charges is a reason to doubt an applicant's claims of innocent behavior).

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

Applicant has a history of financial problems. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (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 financial problems are attributable to his employment issues and medical conditions. He settled one debt. The remaining non-medical debts total less than \$2,000. He stated that he planned to resolve his remaining financial problems. Security concerns about Applicant's finances are mitigated.

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines E and F in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial considerations security concerns, but he did not mitigate the personal conduct 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 E:	Against Applicant
Subparagraphs 1.a-1.c:	Against Applicant
Subparagraphs 1.d-1.e:	For Applicant
Subparagraphs 1.f-1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Paragraph 2, Guideline F:	For Applicant
Subparagraphs 2.a-2.r:	For Applicant

Conclusion

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.

Edward W. Loughran
Administrative Judge