



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-04988

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: *Pro se*

09/24/2015

Decision

HOWE, Philip S., Administrative Judge:

On July 16, 2013, Applicant submitted his electronic version of the Security Clearance Application (e-QIP). On January 15, 2015, the Department of Defense issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F, H, and E. The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended (Regulation); Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on February 24, 2015. Applicant requested his case be decided on the written record in lieu of a hearing.

On June 17, 2015, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM), consisting of Items 1 to 8, was provided to the Applicant on July 15, 2015. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on July 22, 2015. Applicant filed a Response to the FORM within the 30 day time allowed that would have expired on August 21, 2015. Department Counsel had no objection to these exhibits being entered into the record. I received the case assignment on September 1, 2015. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant admitted the allegations in Paragraphs 1, 2, and 3. He offered comments on Paragraphs 2 and 3 in his defense. (Items 1-4)

Applicant is 51 years old and a defense contractor employee for the past two years. He is not married. He has one child who was born in 2012. (Item 5)

Applicant has seven delinquent debts totaling \$20,628 as listed in the SOR. He admitted all of them. He did not list any of them in his e-QIP in Section 26 of the document pertaining to financial delinquencies. His Answer stated he must have been confused by the question. (Items 4, 5)

The delinquent debts include about \$14,700 owed to a bank on two credit cards from 2008 and 2010 (Subparagraphs 1.a and 1.b.). He owes another credit card issuer \$1,924 from 2008 (Subparagraph 1.c). Applicant owes a debt collector \$1,298 for 2010 on an account (Subparagraph 1.d). He owes another bank \$1,285 from 2010 (Subparagraph 1.e). Applicant owes a debt collector \$920 from 2012 (Subparagraph 1.f). He also owes an auto lender \$323 from 2006 (Subparagraph 1.g). He has not resolved any of these debts. (Items 4, 6, 7)

Applicant admitted in his e-QIP, in response to Section 23 about the use of illegal drugs, that he used marijuana "once in a while, recreationally." He stated he used it from June 2003 to January 2013. He started working for his current employer in July 2013. In his Answer, Applicant admitted the use of marijuana but claims he quit using it in 2006. He did not provide any information to support this difference between his Answer and his e-QIP. Therefore, I find Applicant used marijuana from 2003 to 2013, a period of ten years. (Item 4, 5)

Applicant failed to disclose on the e-QIP in Section 26 his seven financial delinquencies. He admitted to using an illegal drug, marijuana, for ten years. His Answer claims he was confused by the question or misunderstood the financial and illegal drug use questions. His Response consisted of the SOR with his comments regarding Guideline E that "the terminology and paper work was confusing [and] I had no intention of lying." The questions are clear in the information they seek. The e-QIP

contains in the signature block the statement that the Applicant's answers therein are "true, complete, and correct" and made in good faith. Applicant did not answer the e-QIP in that manner on these two sections. (Items 4, 5; Response)

Applicant included in his Response a written statement asserting that he did not intend to lie on his e-QIP. He found the e-QIP "overwhelming and some of the terminology and phrasing had me a bit confused." He claims he is doing well in his job and has two daughters to take care of now. He claims he would not use drugs now because of his daughters and his desire to be a role model for them. His e-QIP lists only one child. He stated he stopped smoking marijuana before he was hired for his current position. Applicant wants to continue in his job and promises to remain focused and determined in his work. (Response)

Applicant did not submit any documentation that he has participated in credit counseling or budget education. He provided no evidence concerning the quality of his job performance. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

Department Counsel submitted eight Items in support of the SOR allegations. Item 8 is inadmissible. It will not be considered or cited as evidence in this case. It is the summary of an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management on August 9, 2013. Applicant did not adopt it as his own statement, or otherwise certify it to be accurate. Under Directive ¶ E3.1.20, this Report of Investigation summary is inadmissible in the absence of an authenticating witness. In light of Applicant's admissions, it is also cumulative.

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 useful 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, the administrative judge applies 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(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 access to classified information 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.

According to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 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. 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 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. From these nine conditions, two conditions are applicable to the facts found in this case:

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

From 2008 to the present, Applicant accumulated seven delinquent debts, totaling \$20,628 that remain unpaid or unresolved. AG ¶ 19 (a) and (c) are established.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. None of the mitigating conditions apply. Applicant did not offer any documents or statements to show he had arranged to pay any of his delinquent debts. He did not demonstrate that the debts occurred under such conditions that they do not cast doubt on his good judgment and reliability (AG ¶ 20 (a)). He did not show the financial conditions were beyond his control and he acted responsibly under the circumstances (AG ¶ 20 (b)). As stated above, there is no financial counseling shown (AG ¶ 20 (c)). Applicant did not show any efforts to repay the debts, so AG ¶ 20 (d) does not apply. There is nothing to show a reasonable basis for debt disputes (AG ¶ 20 (e)), nor any affluence from a legal source (AG ¶ 20 (f)), so these mitigating conditions are not established.

Guideline H, Drug Involvement

AG ¶ 24 expresses the security concern pertaining to illegal drugs:

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

(a) Drugs are defined as mood and behavior altering substances, and include:

(1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and

(2) inhalants and other similar substances;

(b) drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

AG ¶ 25 describes eight conditions that could raise a security concern and may be disqualifying. One condition applies:

(a) any drug abuse (see above definition)

Applicant admitted on his e-QIP that he used marijuana “recreationally” from 2003 to 2013, until just before starting his current job. His Response confirms that time of use. His Answer attempted to redefine the use period to 2006, but the evidence is clear by his own admissions that the period of use was 2003 to 2013. AG ¶ 25 (a) is established.

AG ¶ 26 provides four conditions that could mitigate security concerns. None of them are established. His use was continuous over a decade. AG ¶ 26 (a) is not established. He did not demonstrate by any statement in any document that he would not abuse drugs in the future, even though he claims he has two daughters and would not use drugs now because he wants to be a role model for them. AG ¶ 26 (b) is not established. There is no evidence of prescription drug use alleged in the SOR or discussed in any response to the SOR. AG ¶ 26 (c) is not established. Applicant did not participate in any prescribed drug treatment program. AG ¶ 26 (d) is not established. None of these mitigating conditions are established as they are set forth in Guideline H.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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.

The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, and cooperation with medical or psychological evaluation; and,

(b) refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes seven conditions that could raise a security concern and may be disqualifying. Two conditions may apply:

(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; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

The SOR alleges Applicant did not disclose his financial delinquencies in Section 26 of the e-QIP and acted improperly by using marijuana from 2003 to 2013. These are the two personal conduct issues to be evaluated.

First, Applicant did not disclose his financial delinquencies as alleged in SOR Paragraph 1. He has seven delinquent debts totaling \$20,628 that he incurred from 2008 onward. Applicant did not demonstrate by any documents he submitted that he was unable to repay these debts. He claims he was confused by the question on the e-QIP about his delinquencies, but he never explained the confusion and why he did not list his unresolved debts on the e-QIP.

Second, his personal conduct in using marijuana for a decade until 2013 made him vulnerable to exploitation, manipulation, or duress by engaging in conduct that affects his personal and professional standing in Applicant's community. These two disqualifying conditions are established.

There are seven mitigation conditions listed in Guideline E. None of them are established by Applicant to apply to him. He did not make prompt good-faith efforts to correct his omissions. AG ¶ 17 (a) is not established. He did not have any legal advice or from an authorized person to conceal the requested information. AG ¶ 17 (b) is not established. His offense is not minor, occurring long ago, or infrequent, so it does cast doubt on Applicant's reliability, trustworthiness, or good judgment. AG ¶ 17 (c) is not established. Applicant has not taken any positive objective steps to alleviate the two conditions or reduce his vulnerability. AG ¶ 17 (e) is not established. The last two mitigating conditions do not apply under the facts in the case, so AG ¶ 17 (f) and (g) are not established.

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(a):

(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. Applicant was an adult when he incurred the debts and smoked the marijuana.

Applicant has not taken any action to resolve his delinquent debts. This inaction leaves him vulnerable to pressure, coercion, exploitation, or duress based on the magnitude of his financial obligation. His lack of action continues to this day, and is obviously voluntary. His inaction will continue based on his past performance. Applicant displayed a lack of good judgment incurring the debts. Next, he exhibited a continued lack of appropriate judgment by failing to make payments on any of his delinquent debts during the past seven years.

Applicant used marijuana for a decade. He used it until 2013 and now claims he stopped using it before he was hired into his current position. There is no objective evaluation to support any of his claims. Between his e-QIP, his Answer, and now his Response to the FORM, he changed his story about when he quit using marijuana twice. First it was in 2013, then 2006, and now back to 2013. His credibility is seriously undermined by the constant variations in his story.

Overall, the record evidence leaves me with questions or substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under the guidelines for Financial Considerations Drug Involvement, or Personal Conduct. I conclude the whole-person concept against Applicant.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a to 1.g:	Against Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a and 2.b:	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.

PHILIP S. HOWE
Administrative Judge