



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



In the matter of:)	
)	
-----)	ISCR Case No. 14-06841
)	
Applicant for Security Clearance)	

Appearances

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

04/25/2016

Decision

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

Statement of the Case

On July 24, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations), Guideline H (Drug Involvement), and Guideline E (Personal Conduct).¹ In an August 14, 2015, answer to the SOR, Applicant admitted the 16 allegations raised under Guideline F and, with brief comments, the sole allegations raised under Guideline H and Guideline E. He also requested a determination based on the written record.

On November 30, 2015, the Government issued a File of Relevant Material (FORM) with nine attachments (“Items”). Applicant did not respond to the FORM. In the FORM, the Government moved to withdraw SOR paragraph 3, subparagraph 3.a. Noting no objection, that allegation is struck from the SOR, eliminating concerns related to Guideline E (Personal Conduct). The case was assigned to me on April 12, 2016. Based on my review of the case file and submissions, I find Applicant failed to mitigate financial considerations and drug involvement security concerns.

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 September 1, 2006.

Findings of Fact

Applicant is a 42-year-old applicant for work or recent hire at a defense contractor. From 2003 through at least 2014, he was a small business owner. Applicant is a naturalized United States citizen and has earned a college degree. He was divorced in 2005, has four minor children, and has a current cohabitant. There is no documentary evidence indicating he has received financial counseling. At issue are 16 delinquent debts, at least seven of which are medical accounts and one is an adverse judgment. In addition, he tried marijuana in 2013 and failed to disclose it in his 2014 security clearance application.

The judgment and delinquent debts at issue amount to approximately \$39,350, including an adverse 2012 judgment for \$1,488 and about \$14,100 in medical debt. The delinquent debts range from \$90 to \$12,310, eight of which range between \$90 and \$611. In his SOR answer, Applicant merely admitted the related allegations without further comment. The record includes scant references to the medical-related debts, including their origin, although there are notations that they were unpaid due to lack of funds. Lack of sufficient income is cited elsewhere as being the reason for his delinquent debts. The record is devoid of documentary evidence showing any progress on the delinquent debts at issue, including plans to repay them, disputes regarding their accuracy, or efforts to address them. At best, he references the intent to work with a counseling or debt management service in the future. (FORM at 4 of 7)

To be social, Applicant took one or two “hits” of marijuana at his 40th birthday party in October 2013. (SOR answer and FORM, Item 6 at 9) He had only used the illegal drug on two previous occasions, in college. He concedes it was a poor decision and writes in response to the SOR that he does not intend to use it again. He did not disclose his recent drug use in his March 2014 SCA.

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(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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

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. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information.

Section 7 of Executive Order 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

Financial Considerations – Guideline F

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 information. An individual who is financially overextended is at risk of engaging in illegal acts to generate funds.

Here, the Government introduced credible evidence showing Applicant has numerous delinquent debts, including one adverse judgment. Applicant admits the allegations related to these obligations. This is sufficient to invoke two of the financial considerations disqualifying conditions:

AG ¶ 19(a) inability or unwillingness to satisfy debts; and

AG ¶ 19(c) a history of not meeting financial obligations.

Five conditions could mitigate these finance-related security concerns:

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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

AG ¶ 20(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

AG ¶ 20(d) the individual initiated 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.

Applicant presented scant information, and no documentary evidence, regarding the origin of these debts or of any efforts to dispute, address, repay, or otherwise resolve these accounts. There is no documentary evidence indicating that he has sought or received financial counseling. The majority, if not all, of the delinquent debts appear to be the result of insufficient income and financial resources. There is no documentary evidence of progress on the debt, or suggesting that the debt is in any manner under control. Moreover, Applicant presented no documents suggesting he is presently formulating a plan for addressing these debts. In light of these considerations, I find that none of the mitigating conditions are AG ¶ 20 apply.

Drug Involvement - Guideline H

The concern under Guideline H is that 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. Here, Applicant used marijuana in 2013 that he ultimately disclosed in 2014 or 2015. Under these facts, the following disqualifying condition applies:

AG ¶ 25(a) any drug abuse.

I have considered all of the evidence in this case and the mitigating conditions under drug involvement and found the following relevant:

AG ¶ 26(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;

AG ¶ 26(b) a demonstrated intent not to abuse any drugs in the future, such as:

- (1) disassociation from drug-using associates and contacts;
- (2) changing or avoiding the environment where drugs were used;
- (3) an appropriate period of abstinence; and,
- (4) a signed statement of intent with automatic revocation of clearance for any violation;

Applicant's marijuana use was less than three years ago. Scant elaboration has been provided showing systemic lifestyle changes that would prevent such voluntary, spontaneous, and "sociable" recurrences from happening again in the future. Less than three years is insufficient time for a man of Applicant's age with a long, albeit sporadic, history of illegal drug use to demonstrate his commitment to continued abstinence.

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 will consider the adjudicative process factors listed at AG ¶ 2(a) and conduct a whole-person evaluation. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I incorporated my comments under the guidelines at issue in my whole-person analysis.

Applicant is a 42-year-old and was a small business owner from 2003 through at least 2014. He is a naturalized United States citizen and has a college degree. He was divorced in 2005, has four minor children, and has a current cohabitant. There is no documentary evidence indicating he has had financial counseling. He has about \$40,000 in delinquent debts, including several in the \$90 to \$650 range. He presented no documentary evidence tending to mitigate the security concerns these delinquent debts have raised, either in terms of their creation or their continued neglect. He addresses these obligations by writing that he simply lacks the income to address them.

Applicant admitted that he used marijuana on occasion in college. Years later, he again used the illegal drug, taking one or two "hits" of the drug to be "sociable" at his 40th birthday party. While subsequently open about his abuse of the substance, he did not disclose it on his 2014 SCA. In responding to the 2015 SOR, he wrote that he had

no intention to use the drug again in the future. Given his erratic and spontaneous use of a known illegal drug over the course of his adult life, however, more than three years of abstinence is needed to acknowledge the severity of his illegal behavior and demonstrate his commitment to staying clear of illegal drugs. In light of the foregoing, I find that Applicant failed to mitigate security concerns arising under the applicable financial considerations and drug involvement guidelines.

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 F:	AGAINST APPLICANT
Subparagraphs 1.a-1.p:	Against Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraph 2.a:	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