



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



In the matter of:)
)
) ISCR Case No. 15-00403
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: David Knopp, Personal Representative

March 17, 2016

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant mitigated his marijuana use and single, marijuana-related conviction by successfully completing a drug treatment program in 2010, without relapse. Additionally, Applicant resolved all 13 delinquent debts identified on the Statement of Reasons (SOR). However, he failed to fully disclose his marijuana use, his marijuana conviction, and his delinquent debts on his July 2013 security clearance application. He was unable to articulate a plausible reason for these omissions. Applicant failed to mitigate the security concerns raised by his Personal Conduct. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted his electronic Security Clearance Application (e-QIP) on July 8, 2013. On August 1, 2015, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under the guidelines for Drug Involvement; Criminal Conduct; Financial Considerations; and Personal Conduct. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; 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 after September 1, 2006.

Applicant answered the SOR (Answer) on August 15, 2015, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on October 21, 2015. A notice of hearing was issued to Applicant on November 4, 2015, scheduling a hearing for December 15, 2015. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 6, which were admitted without objection. Applicant testified on his own behalf, and offered Applicant's Exhibits (AE) A through I, which were admitted into the record without objection. Applicant requested that the record be left open to allow him to submit additional evidence and his request was granted. From January 11, 2016, through January 20, 2016, Applicant presented additional exhibits, marked AE J through AE M.¹ Department Counsel had no objections to AE J through AE M, and they were admitted into the record. The record then closed. DOHA received the transcript of the hearing (Tr.) on December 28, 2016.

Findings of Fact

Applicant is 31 years old. He is unmarried and has two children, ages 6 and 8. He graduated with an associate's degree in 2014. Applicant has worked for his current employer, a government contractor, since November 2014 and seeks a security clearance in connection with that employment. He was unemployed from January 2008 through April 2011; January 2012 through February 2012; and January 2013 to May 2013. (GE 1; AE G; Tr. 33.)

The Government alleged in the SOR that Applicant should be disqualified from holding a security clearance under the guidelines for Drug Involvement, due to his use of marijuana from 2002 to 2013 (as listed in SOR ¶ 1.a), and Criminal Conduct for his February 12, 2009 arrest for possession of marijuana for sale (as listed in SOR ¶ 2.a). In his Answer, Applicant admitted using marijuana six times, but claimed the last use was prior to 2009. He admitted the sole allegation of criminal conduct.

Applicant testified that he smoked marijuana six times between 2002 and 2009.² He indicated that he started down the wrong path after high school. During that time, he lived with his mother, brother, sister-in-law, and their child. He testified that "someone" was selling marijuana from their home in 2009. He claimed that he took responsibility for the marijuana found by the police at their home, to protect his brother and his family, although he would not directly state that his brother was the one selling marijuana. As a result, Applicant was charged with possession of marijuana for sale. He pled guilty to the lesser charge of "marijuana-less than 1 ounce," and was found guilty. He was placed on probation for 36 months. As part of his probation, he was required to attend a drug treatment program, which he completed on October 6, 2009. He presented a letter

¹ Applicant submitted multiple reference letters that were compiled into AE J.

² There is no record evidence to support the allegation that Applicant used marijuana after 2009.

from the program manager at the treatment center documenting Applicant's successful completion of the treatment program, which incorporated random drug testing. He testified he has not used marijuana since he completed that program. He moved to another city to attend school shortly after this incident. (AE C; AE D; Tr. 28-29, 37-42.)

Additionally, the Government alleged that Applicant is ineligible for a clearance, because he made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness, and ability to protect classified information. The SOR identified 13 delinquent debts totaling \$4,599. Applicant's debts appear in credit reports entered into evidence dated August 6, 2013; July 9, 2015; October 7, 2015; and December 12, 2015. Applicant denied all of the debts in his Answer. (Answer; GE 3; GE 4; GE 5; GE 6.)

Applicant attributed his financial delinquencies to periods of unemployment, outlined above. He noted that he lived in his car while he attended school. He used what little money he had to eat. He sold blood at blood banks and worked as a day laborer to survive. (Tr. 36-37.)

The debts identified in SOR ¶¶ 3.a through 3.d were owed to a city government for unpaid parking tickets in the total amount of \$104. Applicant presented a copy of his bank statement that shows he paid the city \$106.25 on August 26, 2015, to resolve these debts. (AE K.)

Applicant is indebted to a collection agent for the city in which he lives, as alleged in SOR ¶¶ 3.e, 3.g, and 3.i, in the amounts of \$479, \$351, and \$300, respectively. Applicant credibly testified that he resolved these debts that related to fines he received for fare evasion and using a cell phone while driving. He testified that these debts are paid and presented copy of a released withholding order as proof that they are resolved. (AE E; Tr. 44-45.)

Applicant was indebted to a collection agent for a cellular phone company in the amount of \$419, as alleged in SOR ¶ 3.f. On August 14, 2015, a letter from this creditor reflected the remaining account balance was \$209.44. Applicant presented a copy of his bank statement that shows a payment was made to the collection agent in the amount of \$209.43 on August 17, 2015. This debt is resolved. (AE H; AE I; AE L; Tr. 44.)

Applicant was indebted to a telecommunications company in the amount of \$336, as alleged in SOR ¶ 3.h. Applicant presented a letter dated August 19, 2012, which shows he has a zero balance on this account. It is resolved. (AE B; AE M.)

Applicant was indebted to a cable company on two debts in the amount of \$65 and \$32, respectively, as alleged in SOR ¶¶ 3.j and 3.k. He presented a copy of his bank statement that shows both of these debts were paid in full on August 17, 2015. (AE L.)

Applicant was delinquent on his child support obligation in the amount of \$2,455. He presented documentation from his state's child support service that shows he is now current with his support obligation. This delinquency is resolved. (AE F; Tr. 46.)

The SOR also alleged concerns under the guideline for Personal Conduct, because Applicant deliberately failed to disclose his marijuana use; his arrest and conviction for marijuana possession; and his delinquent debts on his July 2013 e-QIP. Applicant claimed his omissions on his e-QIP were unintentional errors. He testified that he was not using marijuana at the time he completed the e-QIP, and misunderstood the question. He had no answer as to why he omitted his marijuana arrest and conviction. He claimed he failed to list his delinquent debts because he was unaware of them at the time he completed his e-QIP. (Tr. 47-51.)

Applicant is respected for his self-motivation, determination, perseverance, and professionalism by his manager, former classmates, friends, colleagues, and family members, as documented in the many letters of support that he submitted. Those who have known Applicant since he was a child noted Applicant's early struggles and his triumph over adversity by focusing on obtaining a higher education. He is a good father to his children and a role model in their lives. (AE A; AE J.)

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(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 the decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing 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, 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 clearance decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. The 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 as to potential, rather than actual, risk of compromise of classified information.

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 H, Drug Involvement

AG ¶ 24 expresses the security concern pertaining to Drug Involvement:

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.

I have considered all of the evidence in this case and the disqualifying conditions under Drug Involvement AG ¶ 25, and the following are potentially applicable:

- (a) any drug abuse; and
- (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant used marijuana six times from approximately 2002 to 2009. The facts established through the Government’s evidence and through Applicant’s admissions, raise security concerns under all of the above disqualifying conditions.

I have considered all of the evidence in this case and the mitigating conditions under Drug Involvement AG ¶ 26, and the following are potentially applicable:

- (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;

(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; (4) a signed statement of intent with automatic revocation of clearance for any violation; and

Applicant used marijuana on approximately six occasions after he graduated from high school, over six years ago. He successfully completed six months of outpatient treatment in October 2009. He has not used marijuana since completing treatment. Instead, he focused himself on graduating college, despite being homeless during much of his studies. He is a good father to his children and performs well at work. It is unlikely that Applicant will use marijuana again. His past marijuana use does not cast doubt on the individual's current reliability, trustworthiness, or good judgment. Further, he had demonstrated his intent to abstain from the use of drugs in the future. The evidence supports the application of AG ¶¶ 26(a) and 26(b).

Guideline J, Criminal Conduct

AG ¶ 30 expresses the security concern pertaining to criminal conduct:

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.

AG ¶ 31 describes five conditions that could raise a security concern and may be disqualifying. One condition applies:

(a) a single serious crime or multiple lesser offenses.

Applicant was arrested and charged with possession of marijuana for sale. He pled guilty to the lesser offense of convicted of marijuana-less than 1 ounce, and was found guilty of that charge. He was on probation for 36 months, as a result of his conviction. His conduct raises security concerns under AG 31(a), and shifts the burden to Applicant to rebut, extenuate, or mitigate those concerns.

AG ¶ 32 provides four conditions that could mitigate security concerns:

(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;

(b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(c) evidence that the person did not commit the offense; and

(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

All of the above conditions apply. Applicant was living at home with a family member who was engaged in the sale of marijuana, but Applicant was not actually selling it himself. He took responsibility for the marijuana the police found to protect his brother and his brother's family. After the arrest, Applicant moved away and began attending college in another city. The familial pressures, and the pressures of marijuana, are no longer present in his life. Applicant's involvement with marijuana ended over six years ago and is unlikely to recur. He has completely changed his life by going to college and becoming a successful employee at work. He provides for his two children and is considered by those that know him to be a good father. He has successfully rehabilitated himself and is remorseful for his past drug use. The Criminal Conduct concerns are mitigated

Guideline F, Financial Considerations

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

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

The SOR alleges that Applicant incurred approximately \$4,599 in delinquent debt from 2010 to present. The credit reports show the Government established its *prima facie* case against Applicant. The evidence showed Applicant's "inability or unwillingness to satisfy" his debts from 2010 to 2013, when he was unemployed and homeless. He had an overall "history of not meeting financial obligations" during that time period.

All of the Financial Considerations mitigating conditions under AG ¶ 20 were considered, including:

(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;

(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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant has acted reasonably and responsibly by resolving all of his delinquent debts. Further, his debts occurred as a result of Applicant's homelessness and unemployment, while he sought to achieve a higher education. Now that he has graduated with his associate's degree, he is fully employed and applicant successfully maintains an apartment. Future financial delinquencies are unlikely. AG ¶ 20(a), 20(c), and 20(d) are mitigating.

Guideline E, Personal Conduct

The security concern for the Personal Conduct guideline 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 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.

Applicant omitted his marijuana use and marijuana-related arrest on his July 2013 security clearance application in "Section 22: Police Record;" and "Section 23: Illegal Use of Drugs or Drug Activity." Applicant's arrest and conviction was a turning point in his life. He moved away from a difficult familial situation and worked hard to put himself through college. He stopped using marijuana and rehabilitated himself. While he should be proud of these efforts, it is unlikely that he simple forgot the details or timeframe of his marijuana use and conviction. He was unable to articulate a reasonable explanation for these omissions. The language in each of the questions is

clear. Applicant intentionally omitted his marijuana use and marijuana-related arrest and conviction. His conduct raises security concerns under AG 16(a), and shifts the burden to Applicant to rebut, extenuate, or mitigate those concerns.

Applicant also failed to disclose his financial delinquencies on his e-QIP. Applicant's explanation that he was unaware of his delinquent debts when he completed the e-QIP is credible. He was living out of his vehicle at the time the debts were incurred and was not good at keeping track of his delinquencies in a responsible manner. His failure to list his financial delinquencies in "Section 26: Financial Record" was unintentional and does not raise a security concern under this Guideline.

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

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (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 caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

There is no evidence that Applicant made a prompt or timely disclosure of his marijuana use and conviction before being confronted with the facts in this case. The evidence does not support the application of AG ¶ 17(a).

Further, Applicant did not assert that the omission was caused by improper advice when he completed his application. The evidence does not support the application of AG ¶ 17(b).

Applicant's failure to disclose his marijuana use and conviction creates vulnerability to coercion related to his falsification. He made poor decisions in

concealing his criminal past and marijuana use. He clearly is embarrassed about his past. He failed to take responsibility for intentionally omitting his criminal conduct and marijuana use from his e-QIP. He did not produce sufficient evidence that similar lapses in judgment are unlikely to recur, without the passage of more time or other evidence that demonstrates trustworthiness and good judgment. The evidence does not show AG ¶¶ 17(c) and 17(d) are applicable.

Applicant has earned an excellent reputation at work. However, not enough time has passed to know whether Applicant could again be tempted to violate laws or other rules for his own personal benefit, as he did when he falsified his e-QIP. AG ¶ 17(e) is not supported by the record.

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 the 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 pertinent facts and circumstances surrounding this case. I have incorporated my comments under Guidelines H, J, F, and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is highly respected by those who know him. He has overcome significant adversity and has graduated from college with an associate's degree. He is a hardworking employee of a Government contractor, with past financial difficulties stemming from his unemployment and homelessness. Yet, he diligently resolved his financial delinquencies in a responsible manner. These are factors that weigh in Applicant's favor.

Applicant has used marijuana approximately six times from approximately 2002 to 2009. He was convicted of marijuana possession in 2009. He has not used marijuana

since 2009. He successfully completed drug treatment. He demonstrated that he is committed to a drug-free lifestyle and has rehabilitated himself from his marijuana-related conviction.

However, Applicant was not fully truthful with the Government on his 2013 security clearance application. Applicant knowingly omitted his marijuana use and marijuana-related conviction on his e-QIP. He also failed to disclose his drug treatment on his security clearance application, although it was not alleged on the SOR. Those decisions show questionable judgment. Not enough time has passed since Applicant's 2013 falsification to permit a finding that Applicant has fully rehabilitated his poor personal conduct. He has not established that he has the personal judgment required to hold a security clearance at this time.

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 H:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline F:	FOR APPLICANT
Subparagraphs 3.a through 3.m:	For Applicant
Paragraph 4, Guideline E:	AGAINST APPLICANT
Subparagraph 4.a:	Against Applicant
Subparagraph 4.b:	Against Applicant
Subparagraph 4.c:	For 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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Jennifer I. Goldstein
Administrative Judge