



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



In the matter of:)
)
) ISCR Case No. 17-02413
)
Applicant for Security Clearance)

Appearances

For Government: Gatha Manns, Esq., Department Counsel

For Applicant: *Pro se*

03/04/2019

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant did not mitigate the personal conduct security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On August 4, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline E (personal conduct). The action was taken under Executive Order (Exec. Or.) 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) implemented by DOD on June 8, 2017.

Applicant responded to the SOR on August 29, 2017, and requested a hearing. The case was assigned to me on June 13, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 3, 2018, scheduling the hearing for August 9, 2018. I convened the hearing as scheduled.

I marked the Government's exhibit list and discovery letter as Hearing Exhibit (HE) I. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant testified. At Applicant's request, I held the record open until August 23, 2018, for the receipt of additional evidence. Applicant timely provided documentation, which I marked collectively as AE A. Department Counsel objected to AE A on the ground that it was unreliable. I overruled Department Counsel's objection and admitted AE A in evidence. DOHA received the hearing transcript (Tr.) on August 17, 2018.

Findings of Fact

Applicant admitted all of the SOR allegations. He is 38 years old. He has never been married and he does not have any children.¹

Applicant graduated from high school in 1998. He attended college from 1998 to 2004, but he did not earn a degree. He has worked for his current employer, a defense contractor, since May 2017. Since he started working for his current employer, he received two raises and was recently promoted. He has worked for various defense contractors and held a security clearance since 2008.²

Applicant lied about having a bachelor's degree during a November 2008 background interview, on his August 2010 security clearance application (SCA), and during a December 2016 background interview. He also lied about having a bachelor's degree during the hiring process with a prospective employer in late 2011. Though this employer fired him in early 2012 after learning that he did not have such a degree, he lied on his December 2015 SCA and during the 2016 background interview when he stated that he left this job in 2012 because he received a new employment offer (SOR ¶¶ 1.a - 1.f). He admitted that he initially lied about having a bachelor's degree, and the true reason for his 2012 firing, only after he was confronted during the 2016 interview.³

Applicant struggled academically in college. He was suspended for several semesters because his grade point average fell below a 2.0. He walked away from college in 2004. He testified that lying about graduating from college is one of his life's biggest regrets. He testified that he is ashamed that he never graduated, as he comes from a family who have earned professional degrees. He testified that he was in his early 20s when he first told the lie, and he did not truly understand the ramifications. He testified that when he applied for a job, "the lie just became my story . . . it's catching up to me now . . . with my security clearance." He expressed remorse for his deception, stating "that's not who I am, and it's something that I'm . . . very, very ashamed about."⁴

¹ Response to the SOR; Tr. at 7, 24-25, 91-92; GE 1-3.

² Tr. at 7-8, 25, 42-52, 78, 83-88; GE 1-3.

³ Response to the SOR; Tr. at 22-110; GE 1-5. Applicant acknowledged that he likely lied about having a bachelor's degree to two other employers in around 2005 and 2007. Tr. at 29-32, 34-36.

⁴ Tr. at 22-110.

Applicant testified that after his 2012 employment termination, he revised his resume to reflect only that he attended college from 1998 to 2004 in pursuit of a bachelor's degree. He testified that he gave his revised resume to his prior employer as well as to his current employer. He testified that his current employer is aware that his highest level of education is a high-school diploma. He provided a copy of his resume, which reflects under the heading titled "Education," the name of the college he attended and his area of study. He also provided copies of two emails, dated March 8, 2012 and April 2, 2013, purporting to corroborate his testimony that he gave his revised resume to his prior employer from 2014 to 2017. As both the emails reflect that he is both the sender and the receiver, I do not give these documents any weight.⁵

As of the date of the hearing, Applicant's mother, siblings, and girlfriend were unaware that he did not have a bachelor's degree, and that he falsified information about having one. Though he testified that he would not be concerned if they were to find out, he has not yet told them because he is still ashamed. He does not want to disappoint his mother.⁶

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 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(a), 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.

⁵ Tr. at 83-87, 102-108; GE 4; AE A.

⁶ Tr. at 91-99.

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.

Section 7 of Exec. Or. 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* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern for 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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant:

(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 national security eligibility or trustworthiness, or award fiduciary responsibilities;

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative; and

(e) personal conduct, or concealment of information about one’s conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct

includes: (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing

Applicant lied about having a bachelor's degree during his 2008 and 2016 background interviews and on his 2010 SCA. He also lied about having a bachelor's degree during the hiring process with a prospective employer in late 2011. Though his then-employer fired him in early 2012 after learning that he did not have such a degree, he lied on his 2015 SCA and during the 2016 background interview when he stated that he left this job in 2012 because he received a new employment offer. As of the date of the hearing, his family was unaware that he did not have a bachelor's degree, and that he falsified information about having one, because he is still ashamed to tell them. AG ¶¶ 16(a), 16(b), and 16(e)(1) apply.

AG ¶ 17 describes the following conditions that could mitigate the personal conduct security concerns:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(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; and

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

Applicant admitted during his 2016 interview that he initially lied about having a bachelor's degree, and the true reason for his 2012 firing, only after he was confronted. AG ¶ 17(a) does not apply.

Applicant expressed remorse at the hearing. However, his remorse does not overcome his pattern of deception from 2008 to at least 2016. His family was also unaware that he did not have a bachelor's degree, and that he falsified information about having one, because he was still ashamed to tell them. I continue to have doubts about Applicant's reliability, trustworthiness, and judgment. AG ¶¶ 17(c), 17(d), and 17(e) 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 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 Guideline E in my whole-person analysis.

I considered Applicant's expression of remorse at the hearing. However, his remorse does not overcome his pattern of deception from 2008 to at least 2016. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant 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.f:	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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Candace Le'i Garcia
Administrative Judge