



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



In the matter of:)
)
) ISCR Case No. 18-02138
)
Applicant for Security Clearance)

Appearances

For Government: Daniel Crowley, Esq., Department Counsel
For Applicant: *Pro se*

09/11/2019

Decision

RIVERA, Juan J., Administrative Judge:

Applicant has acknowledged his aggressive behavior. He has taken corrective action, and credibly promised to avoid any future incidents of aggressive behavior. Clearance is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on November 3, 2017, seeking to continue the clearance he has held since 1989. After reviewing the information gathered during the background investigation, the Department of Defense (DOD) issued him a Statement of Reasons (SOR) on September 21, 2018, alleging security concerns under Guideline E (personal conduct). Applicant answered the SOR on October 23, 2018, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).

DOHA assigned the case to me on January 16, 2019, and issued a notice of hearing on May 1, 2019, setting the hearing for May 17, 2019. At the hearing, the Government offered nine exhibits (GE 1 through 9). Applicant testified, and submitted two exhibits post-hearing (AE 1 and 2). All exhibits were admitted without objection, except for GE 2. Applicant objected to GE 2 - an unauthenticated summary of

Applicant's January 2018 interview with a government investigator. Consistent with Enclosure 3, Paragraph E3.1.20 of DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) and DOHA Appeal Board precedent, I sustained the objection. DOHA received the hearing transcript (Tr.) on June 5, 2019.

Findings of Fact

In his SOR answer, Applicant admitted SOR ¶ 1.a. He denied all of the remaining SOR allegations. (SOR ¶¶ 1.b - 1.e). His SOR admission, and those at the hearing, are incorporated into my findings of fact. After a thorough review of the record evidence, including his testimony and demeanor while testifying, I make the following additional findings of fact:

Applicant is a 48-year-old owner and president of a corporation doing business with the federal government. He graduated from high school in 1989, and completed some college work, but did not earn a degree. He married in 1990 and divorced in 1998. He has two adult children of this marriage. He remarried in 2005, and he has two children of this marriage.

Applicant enlisted in the U.S. military in 1989 and served honorably until his discharge in 1998. He has held a clearance, for the most part, continuously since 1989. There is no evidence of any issues of security concern, except for those alleged in the SOR.

In his 2017 SCA, Applicant disclosed that his eligibility for access to sensitive compartmented information (SCI) was revoked by another federal agency (Agency) in April 2017. Applicant's background investigation addressed the circumstances that led to the revocation of his SCI eligibility that is documented in GE 2 through GE 8.

The Agency revoked Applicant's eligibility because of "repeated and recent involvement in workplace violence" and a 2004 psychological evaluation that raised concerns about his judgment, reliability, and willingness or ability to obey laws, rules, and regulations. Specifically, the Agency considered Applicant's 1989 (SOR ¶ 1.a) and December 2001 (SOR ¶ 1.b) physical altercations, a December 2016 road rage incident (SOR ¶ 1.d), and a December 2016 work place physical altercation (SOR ¶ 1.e).

In 1989, when he was 17 and attending high school, Applicant was involved in a physical altercation with a security guard. (SOR ¶ 1.a) The security guard grabbed him from behind when he was attempting to enter his car, and Applicant threw him against a car. Apparently, the security guard had no legal basis to grab Applicant from behind without a warning. Applicant was not arrested or charged as a result of the incident. He disclosed this incident in his first SCA in the early 1990s. (GE 4)

In December 2001, Applicant was involved in a physical altercation with the security system administrator for the company he was detailed to work for under

contract. He was told he could not bring outside computers into a secured area. Applicant was involved in a verbal argument, became angry and made vulgar remarks and gestures, bumped chests with the other person, and in his way out, pushed the door so hard that it damaged the wall. Applicant received a verbal reprimand and was warned that any future incidents would result in his dismissal. (SOR ¶ 1.b)

As a result of the above incident, Applicant was required to participate in a psychological assessment in April 2004. The psychologist concluded Applicant had several maladaptive personality traits that appear to be longstanding and inflexible. She concluded Applicant did not have a major mental illness or a substance disorder. Applicant was diagnosed with a Personality Disorder Not Otherwise Specified, with Narcissistic and Antisocial Features. She determined Applicant was at moderate risk for unreliable behavior in the future. In August 2004, Applicant signed a "Special Security Awareness Acknowledgement" regarding his personal conduct. (GE 3)

In December 2016, Applicant was driving his car to or from lunch with co-workers in his vehicle. He was cut off by another driver and was involved in a verbal altercation and car chase with the occupants of the other vehicle. He exhibited aggressive behavior described by some of his co-workers as road rage. (SOR ¶ 1.d) Applicant admitted parts of this allegation. He claimed that he followed the other car to obtain its license plate; that his occupants were never in danger, that there was no police intervention, and that the co-workers in his car have continued to go out to lunch with him. He averred that the incident was reported as a concern by the same person with whom he was involved in an altercation in 2001. He believes that the individual seeks any opportunity to take revenge against Applicant.

In December 2016, Applicant also was involved in a physical altercation at the work place while employed as the president of a corporation contracting with the Government. Applicant admitted the physical altercation, but claimed that he did not start the altercation, and that he was defending himself. He acknowledged that he made a judgment mistake when he failed to de-escalate the situation.

I note that the Agency made a comprehensive investigation of this incident, interviewing witnesses and co-workers with knowledge of this incident and prior incidents or concern regarding Applicant. The general sense derived from reading the summary of the investigation is that Applicant had aggressive tendencies and a volatile personality. Notwithstanding, the witnesses and co-workers opined Applicant could be trusted and relied upon to protect classified information. (GE 3 and 6)

Following the last incident in December 2016, Applicant sought psychological counseling in July 2017, to help him learn from his mistakes and overcome the problems he was having. He realized that as the owner of a corporation he needed to learn to professionally manage and supervise his employees without any altercations or confrontations. He now sees his interpersonal skills as pivotal part of his job and his company's success.

After considering all of the evidence he accumulated during his clinical evaluation, as well as that included in the revocation of Applicant's eligibility by the Agency, the psychologist concluded that the evidence failed to demonstrate "an enduring pattern that would meet the criteria for a Personality Disorder – NOS." In his opinion, Applicant does not have any indication of mental instability or any other form of mental health pathology.

The psychologist recommended Applicant participate in psycho-educational counseling to help him effectively manage his reactivity to provocations of others. Applicant followed the psychologist's recommendations and took an online eight-hour anger-management course accredited with his state's court system. Applicant found the course very helpful to help him understand his assertive personality and its effects on others. It taught him to deal not only with his own anger, but also to recognize and deal with others' anger so that he can defuse possible violent situations in the future.

Applicant believes that he has learned a hard lesson as a result of the Agency revocation of his eligibility. He credibly stated that this type of incidents will never happen again. He noted that his online anger-management course was very helpful, but what made things very clear to him was losing close to \$300,000 in two years because of his ineligibility for a clearance. Applicant stated: "I know what happened and I'm very clear on what happened. I'm very clear of the repercussions of what happened. I'm very clear on the repercussions that could happen if it ever happened again." He has not had any additional altercations since the last incident in December 2016.

Policies

The SOR was issued 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* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), implemented by the DOD on June 8, 2017.

Eligibility for access to classified information may be granted "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, § 2. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person's suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in SEAD 4, App. A ¶¶ 2(d) and

2(f). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; SEAD 4, ¶ E(4); SEAD 4, App. A, ¶¶ 1(d) and 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Guideline E: Personal Conduct

AG ¶ 15 sets forth the security concern 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 or sensitive information

Between 1989 and 2016, Applicant was involved in four verbal and physical altercations where he exhibited aggressive behavior. The altercations in 2001 and 2016 were physical altercations in the work place.

Applicant's behavior raise the following disqualifying conditions under AG ¶ 16:

(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 information or sensitive information.

The record established the above disqualifying condition. The following mitigating conditions set forth by AG ¶ 17 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; and

(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.

Applicant has held a clearance since 1989, with no issues or security concerns, except for the current SOR allegations. He disclosed the Agency's revocation of his SCI eligibility in his 2017 SCA, and he was forthcoming at his hearing. He has established a good reputation for properly handling and securing classified information.

The facts alleged in SOR ¶ 1.a occurred 30 years ago, when Applicant was 17 years old, immature, and in high school. I find this incident to be dated, and it also appears that it was not his fault. The incident alleged in SOR ¶ 1.b occurred 18 years ago, but when considered with the two aggressive behavior incidents in 2016, they call into question Applicant's good judgment.

Applicant acknowledged his aggressive behavior and credibly promised not to repeat his questionable behavior. He believes he learned a hard lesson going through the eligibility determination in which the Agency revoked his SCI eligibility because of his aggressive behavior. During the process, Applicant underwent a psychological evaluation and received a favorable diagnosis. He also completed anger-management counseling. Applicant considered the anger-management counseling to be very helpful for his managerial responsibilities.

Applicant is contrite about his past aggressive behavior. He understands that his and his corporation's success depends on his ability to supervise, manage, and professionally deal with his employees, co-workers, and Government supervisors. I find that Applicant is unlikely to continue his aggressive behavior. The revocation of his SCI eligibility cost him close to \$300,000 in two years. There is no evidence of any additional questionable behavior. I find that Applicant's past aggressive behavior does not cast doubt in his current reliability, trustworthiness, or good judgment. The two mitigating conditions outline above apply and mitigate the personal conduct security concerns.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. SEAD 4, App. A, ¶¶ 2(a) and 2(d). I have incorporated my comments under Guideline E in my whole-person analysis. Some of these factors were addressed under that guideline, but some warrant additional comment.

Applicant is a 48-year-old president and owner of a corporation doing business with the federal government. He honorably served in the military for nine years. He has held a clearance since 1989 without any issues or concerns, except for the SOR current allegations.

Applicant is fully aware of the security concerns raised by his aggressive behavior in the work place. He credibly promised to avoid any future aggressive behavior concerns. I believe that he has learned a hard lesson and will not repeat his aggressive behavior. The personal conduct security concerns are mitigated.

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:	FOR APPLICANT
Subparagraphs 1.a-1.e:	For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest of the United States to grant eligibility for a security clearance to Applicant. Clearance is granted.

JUAN J. RIVERA
Administrative Judge