



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



In the matter of:)
)
) ISCR Case No. 19-00444
)
Applicant for Security Clearance)

Appearances

For Government: Liam Apostol, Esq., Department Counsel
For Applicant: *Pro se*

09/17/2019

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant refuted and mitigated the personal conduct security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On March 8, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline E, personal conduct. Applicant responded to the SOR on April 5, 2019, and requested a hearing before an administrative judge. The case was assigned to me on June 12, 2019.

The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 23, 2019, scheduling the hearing for September 4, 2019. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 6 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibit (AE) A, which was admitted without objection.

Findings of Fact

Applicant is a 37-year-old employee of a defense contractor. He has worked for his current employer since 2015. He seeks to retain a security clearance, which he has held for about ten years. He is married with four children. (Transcript (Tr.) at 51-54; Applicant's response to SOR; GE 1, 2)

Applicant attended a religious college from about 2000 to 2005. He received a diploma in general studies. He worked as a manager for a large company from 2000 to 2004. The company had education programs for their managers that had been developed by two prestigious universities. The programs utilized the students' existing education, employment, and life experience, and developed a curriculum that would assist them in their progression in the company. The program from one university (University 1) provided the student-employees with the educational equivalent of a bachelor's degree, and the other university's (University 2) program did the same for a master's degree. (Tr. at 17-21, 45-46, 55-59; GE 2)

Applicant completed the first program in 2002 and the second in 2003. He received certificates, but no actual diploma or degree. He attended another religious college from 2005 to 2007. He received a master's degree in 2006 and three doctorates in 2006 and 2007. He is currently attending graduate courses online. (Tr. at 20, 30, 31, 46-50, 55-57; GE 2)

Applicant worked in information technology for a company in May 2010. There were ongoing problems with a delivery company leaving packages without receiving the required signatures. The delivery company dropped off a package with seven software discs in May 2015, without obtaining a signature. The value of the seven discs was \$962. Applicant opened the package in front of another employee and installed one of the discs in a company laptop. He stated that the delivery person scribbled a name on the receipt. He was upset at the delivery company, and made a poor attempt to correct their behavior. He told the delivery company that they were unable to locate the package. The seller of the software was informed that the package was not delivered and replaced the discs. (Tr. at 31-38, 64-69; GE 4)

Applicant did not inform his employer of his actions, and the employer believed Applicant stole the discs for his personal use. Applicant was terminated in May 2010. He was charged in July 2010 with the felony offense of embezzlement. He hired an attorney. In February 2012, as part of a deferred adjudication, he pleaded guilty to the misdemeanor offense of trespass after having been forbidden. He was fined \$250, ordered to pay \$250 court costs, and he completed 100 hours of community service. (Tr. at 37-38, 42, 69; Applicant's response to SOR; GE 4, 5)

Applicant is remorseful for his conduct. He realizes that his actions were stupid and that he completely mishandled the situation. He credibly testified that he never intended to steal the discs. He has not been arrested or charged with anything else since the incident. (Tr. at 31-32, 38, 72, 75; Applicant's response to SOR)

Applicant applied for a job in June 2010. He was sensitive about his education, and did not know how to report it. He wanted to receive credit for the equivalency education he received from the company in the early 2000s, but he did not want to misrepresent that he had actual degrees from the universities. His resume listed under "Bachelorette Information" his 2005 and 2006 degrees. Under "Graduate Education and Other Education," he listed "Available Upon Request." He discussed his education with the company, including his attendance at the programs provided by the company he worked for in the early 2000s. He had a difficult time explaining the education at his hearing. It is likely that he also had difficulty explaining it to his employer. He was hired by the company. (Tr. at 22-26; GE 3)

In July 2010, the employer conducted a background check on Applicant. The request for the background check included the following:

We would also like to check if he went to [University 1] even though it is not listed on his resume. He is claiming that he went there and has a doctorate.

Applicant credibly testified that he did not tell the employer that he had a doctorate from University 1. He told the employer that he had the equivalent of a master's degree from the program created by University 1. The request for a background investigation does not state that Applicant claimed he had a doctorate from University 1. It states that he claimed he went to University 1 and had a doctorate, which is not the same thing. (Tr. at 27-30, 62-63; GE 6) I find that he was not attempting to falsify his educational credentials.

Applicant worked for a defense contractor from 2010 through 2015. He had an opportunity to move to his current employer to continue working on a contract. He explained his educational background to the employer, including his equivalency education that he received in the early 2000s. Drafts of his resume went back and forth between him and the hiring manager, specifically addressing Applicant's education and how to report his equivalency education. (Tr. at 17, 22-25, 69-70; Applicant's response to SOR; GE 1, 2; AE A) The resume that was eventually provided to the employer included the following language in the discussion of his employment from 2000 to 2004:

Selected as 1 of 30 "[Employer] Future Leaders" globally and provided the opportunity to participate in pilot undergrad and grad equivalent programs developed and administered by [University 1] and [University 2] (respectively), resulting in award of degrees for Engineering (BS) and Business (MBA).

Under the education section of the resume, Applicant listed his actual undergraduate and graduate degrees, and he also listed his equivalency degrees, as follows:

BS, Industrial Engineering. 2002 *[University 1] (Program designed for [Employer] and administered by University staff)*

* * *

MBA, 2003 *[University 2] (Program designed for [Employer] and administered by University staff)*

The resume was inaccurate, but Applicant did not intend to misrepresent his academic credentials. The company was completely aware that Applicant did not receive actual degrees from the two universities, and it worked with Applicant on how to report his education on his resume. (Tr. at 17, 22-25, 69-70; Applicant's response to SOR; AE A)

Policies

This case is adjudicated under Executive Order (EO) 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), which became effective on June 8, 2017.

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(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 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.

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 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 E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, 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 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;

(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;

(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 or sensitive information; 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 did not intentionally provide false information about his academic record to employers in 2010 and 2015. AG ¶¶ 16(a) and 16(b) have not been established. SOR ¶¶ 1.a and 1.b are concluded for Applicant.

Applicant was charged with embezzlement. As part of a deferred adjudication, he pleaded guilty to the misdemeanor offense of trespass after having been forbidden. That conduct reflects questionable judgment and an unwillingness to comply with rules and regulations. It also created vulnerability to exploitation, manipulation, and duress. AG ¶¶ 16(c) and 16(e) are applicable.

AG ¶ 17 provides conditions that could mitigate security concerns. The following 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;

(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 is remorseful for his conduct. He realizes that his actions were stupid and that he completely mishandled the situation. He credibly testified that he never intended to steal the discs. He has not been arrested or charged with anything else since the incident. I find that the conduct is unlikely to recur; it does not cast doubt on Applicant's current reliability, trustworthiness, and good judgment; and it no longer

serves as a basis for coercion, exploitation, or duress. AG ¶¶ 17(c), 17(d), and 17(e) are applicable.

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 have incorporated my comments under Guideline E in my whole-person analysis.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated 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:	For Applicant
Subparagraphs 1.a-1.c:	For Applicant

Conclusion

It is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge