



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 19-00416

Appearances

For Government: Adrienne Driskill, Esquire, Department Counsel

For Applicant: *Pro se*

October 30, 2019

Decision

ROSS, Wilford H., Administrative Judge:

Statement of the Case

Applicant submitted his most recent Electronic Questionnaire for Investigations Processing (e-QIP) on November 18, 2016. (Government Exhibit 1.) On March 13, 2019, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline E (Personal Conduct). The action was taken under Executive Order 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective within the Department of Defense on June 8, 2017.

Applicant answered the SOR in writing (Answer), notarized on April 5, 2019, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on May 30, 2019. The case was assigned to me on June 5, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on June 10, 2019. I convened the hearing as scheduled on July 29, 2019. The Government offered Government Exhibits 1 through 6, which were admitted without objection. Applicant offered Applicant Exhibits A through T, which were admitted without objection. He also called one witness, and testified on his own behalf. I granted Applicant's request to leave the record open to permit him to submit additional evidence. He submitted Applicant Exhibits U and V, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on August 7, 2019.

Findings of Fact

Applicant is a 53-year-old married employee of a defense contractor. He has a bachelor's degree, and a master's degree in business administration. He is seeking to retain a security clearance previously granted in connection with his employment. He has worked for his current employer since 2012 as a senior systems engineer. He served in the Marine Corps from 1989 to 2009, retiring as a Major (O-4). He has held a security clearance almost continuously since 1989. (Tr. 29; Government Exhibit 1 at Sections 12, 13A, and 17; Applicant Exhibits D, Q.)

Paragraph 1 (Guideline E – Personal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has engaged in conduct that shows poor judgment, untrustworthiness or unreliability. Applicant denied allegations 1.a and 1.b under this paragraph. He admitted allegations 1.c and 1.d.

The allegations in this case revolve around Applicant's attendance at a military postgraduate school from 2003 to 2005. Applicant completed the academic requirements for a master's degree in computer science, earning 117.5 credits. This was far above the 40 credits required for a master's degree. Applicant did complete the course of instruction so that he could go on to his next duty station. (Tr. 39-41; Government Exhibit 6.)

However, Applicant did not complete his thesis, and therefore did not complete the academic requirements for a master's degree. Thus, at the graduation ceremony he received a Certificate of Completion, and not a diploma. The Certificate stated:

Presented at commencement exercises. . . . To acknowledge that all course requirements of study have been met. After a thorough evaluation of the academic record by the . . . Postgraduate School Academic Council, and when it is determined that graduation requirements have been met, a

graduate degree will be awarded. (Applicants Exhibit C, U, and V.) (See Tr. 35, 59-60.)

1.a. Applicant filled out an e-QIP on August 12, 2011. Question 12 of the questionnaire asked him about his education. He listed his attendance at the Postgraduate School. The questionnaire then asked, "Degree/diploma received?" Applicant said, "Yes." The question went on to ask the nature of the degree/diploma. Applicant stated, "Master's," in, "Computer Science." As stated, Applicant had completed the coursework requirements for a degree, but not the thesis. Accordingly, this was a false answer to a relevant question about his military education background. (Tr. 31-34; Government Exhibit 2.)

Applicant was subsequently interviewed by an investigator from the Office of Personnel Management (OPM) on November 11, 2011. The investigator reported:

Subject [Applicant] provided the following information.

Subject states that he did not [receive] a masters degree from the . . . college. Subject has completed all classwork and 90 per cent of his masters thesis but he has not completed the thesis and has not turned it in.

Subject states that his inclusion of a masters degree in his education in the case papers was incorrect. Subject states that he forgot that he has not completed the degree. Subject states that the masters degree was not required for the position that he holds and notes that he was allowed to march in the graduation ceremony being awarded a masters degree at the school. (Tr. 43-45; Government Exhibit 3 at 15.)

1.b. Applicant filled out a subsequent e-QIP on November 18, 2016. Question 12 of this questionnaire also asked him about his education. He again put down his attendance at the Postgraduate School. The questionnaire again asked, "Degree/diploma received?" Applicant said, "Yes." The question went on to ask the nature of the degree/diploma. Applicant stated, "Master's" in, "Computer Science." As stated, Applicant had completed the coursework requirements for a degree, but not the thesis. Accordingly, this was a false answer to a relevant question about his military education background. (Government Exhibit 1.)

Applicant testified that he cut and pasted his 2011 e-QIP on his 2016 questionnaire. The computer-generated questionnaire can be pre-populated with answers from a prior questionnaire. Applicant stated that he should have been more detailed in examining the new questionnaire. (Tr. 45-46.)

1.c. Applicant was interviewed by an investigator from OPM on August 28, 2018. Applicant first told the investigator that he had received a master's degree from the Postgraduate School. When confronted with the fact that he had not completed his thesis,

Applicant agreed that he had not actually received the master's degree. (Tr. 47-48; Government Exhibit 3 at 6.) (See Answer at 7.)

1.d. Applicant prepared a resume in approximately 2017 to be used by his employer. In that resume, under the heading "Education," Applicant stated that he had received a "Master of Science in Computer Science." This was a false statement since Applicant did not finish his thesis. (Tr. 48-50; Government Exhibit 5.)

Applicant has now changed his resume to more accurately state, "Computer Science Master's Curriculum." (Applicant Exhibit K at 4.)

Applicant admitted that he misrepresented earning the degree because he was "embarrassed." He stated, "I've never not finished anything. . . . I was really shameful about not completing that theses [sic]." Applicant also stated that he was mad at himself. He maintained that it was never his intent to deceive the government or any other entity or person. He did a lot of work towards the master's, and was frustrated with himself that he did not get it done. (Applicant Exhibit F; Tr. 34, 38-39, 51-52, 55-57.)

Mitigation

Applicant has told his family what happened with his education. He has been open and honest with his employer, as well as many friends and co-workers, who submitted letters of recommendation on his behalf. All seven writers indicated a knowledge of the allegations, and had read the SOR. Six of them had held a security clearance. Several of them are retired Marine or Naval officers who first knew Applicant on active duty and continue to have a relationship with him. All the writers indicate that this conduct of Applicant was not typical of him, and that they are sure it will not be repeated. With knowledge of the SOR, all of them recommend Applicant for a position of trust. (Applicant Exhibits B, D, I, J, L, M, and T.)

The founder and Chief Executive Officer of Applicant's employer wrote Applicant's Exhibit D. He says:

[Applicant] made a lapse in judgment and carried an untruthful statement forward. This is absolutely NOT typical. He is truthful and honest, and is VERY ashamed of himself. He demonstrates good character and judgment and has confessed his misrepresentation to his Spouse . . . , and their 3 boys. It has broken his heart, but he did so to teach them a lesson about being truthful, and used his fault to make a teaching point and life lesson to his sons.

Applicant Exhibit L is from a civilian attorney who has known Applicant for over a decade in the community. The writer is a former Deputy United States Attorney, who also held important posts in the Justice and State Departments. He wrote, "I have always found [Applicant] to be responsible, honest and trustworthy. In our interactions together, not only

was he upright and conscientious, he has been someone who I have learned to trust implicitly to make wise judgments about people, situations and procedures.”

A coworker of Applicant’s testified on his behalf. The witness also wrote Applicant Exhibit I. He has known Applicant over 25 years, both in and out of the Marine Corps, and considers him a close friend. The witness finds Applicant to be trustworthy, and gave several examples of situations where Applicant has shown that ability in stressful situations. (Tr. 60-70.)

Applicant had a successful career in the Marine Corps. He deployed into combat zones and received several decorations. (Applicant Exhibit E.)

Applicant is heavily involved in charity work in his community. (Applicant Exhibits N, O, and P.)

Policies

Security clearance decisions are not made in a vacuum. 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, these guidelines are applied 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(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, “Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the 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 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides: “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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 protect or 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.

Analysis

Paragraph 1 (Guideline E – Personal Conduct)

The security concern relating to Personal Conduct 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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

I have examined the disqualifying conditions under AG ¶ 16 and especially considered the following:

(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;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, 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. This includes, but is not limited to, consideration of:

(1) untrustworthy, or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;

(2) any disruptive, violent, or other inappropriate behavior;

(3) a pattern of dishonesty or rule violations; 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.

The following mitigating conditions under AG ¶ 17 apply to the facts of this case:

(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.

There is no doubt that Applicant repeatedly misstated his educational accomplishments. Applicant was a talented and loyal Marine. He is a successful member of the defense industry. He is highly respected by people who have known him intimately for years. Yet, for personal reasons connected to his ego and pride, and not for personal gain, Applicant was unable to admit for years that he did not receive a graduate degree from the Postgraduate School. However, on three separate occasions he stated to the government that he had received the master's degree. He had to be confronted twice about the falsehood of that statement.

Normally, this conduct is hard to mitigate. Here, however, Applicant has gone out of his way to cure the possible adverse effects of this conduct. He has told his family, his boss, coworkers, fellow veterans, and friends that he respects. The letters of recommendation supplied by Applicant are unanimous in stating that this conduct was an aberration in Applicant's otherwise exemplary life. In addition, with full knowledge of the allegations, the writers recommend him for a position of trust. Mitigation under AG ¶ 17 (c), (d), and (e) apply to this case.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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 the granting or continuing of national security eligibility is clearly consistent with the interests of national security 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. Applicant is a law-abiding, trustworthy, and responsible person and employee. He has made sure that the important people in his life know of his misconduct. He evinces a credible intent to not make such misstatements in the future. Any potential for pressure, coercion, or duress has been eliminated, and such conduct is unlikely to recur. Overall, the record evidence does not create doubt as to Applicant's present suitability for national security eligibility.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline E: FOR APPLICANT

Subparagraphs 1.a through 1.d: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS
Administrative Judge