



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



In the matter of:)
)
-----) ISCR Case No. 19-00441
)
Applicant for Security Clearance)

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: *Pro se*

06/16/2020

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to deny his eligibility for access to classified information. He made multiple deliberately false statements about his background during the security clearance process. Accordingly, this case is decided against Applicant.

Statement of the Case

Applicant completed and submitted a Standard Form (SF) 86, Questionnaire for National Security Positions, the official form used for personnel security investigations, on December 5, 2017. (Exhibit 1) This document is commonly known as a security clearance application. Thereafter, on March 12, 2019, after reviewing the application and the information gathered during a background investigation, the Department of Defense Consolidated Adjudications Facility, Fort Meade, Maryland, sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant him eligibility for access to classified information. The SOR is similar to a complaint. It detailed the factual reasons for the

action under the security guideline known as Guideline E for personal conduct (falsification).

Applicant answered the SOR on April 3, 2019. He provided a four-page memorandum in which he admitted four of the seven falsification allegations. He provided explanations for the three allegations he did not admit.

The case was assigned to me on August 9, 2019. The hearing took place as scheduled on September 26, 2019. Department Counsel offered documentary exhibits, which were admitted as Exhibits 1-3. Applicant offered documentary exhibits, which were admitted as Exhibits A-H. Other than Applicant, no witnesses were called. The hearing transcript (Tr.) was received on October 11, 2019.

Findings of Fact

Applicant is a 26-year-old employee who is seeking access to classified information pursuant to a job offer from a federal contractor to work as a linguist. He is currently employed in the insurance industry. His employment history includes honorable military service. (Exhibits A and B) He was awarded a bachelor's degree in international business in August 2018. (Exhibit C). He has never married and has no children.

Applicant described himself as a "war baby," his parents are natives of Bosnia-Herzegovina, he was born in Germany where his mother and an older brother had fled as refugees, and his father joined them later. (Tr. 32-34) The family immigrated to the United States in 1999. His father is now deceased. He completed high school in 2011 and enlisted in the Army National Guard that same year because he felt an obligation to serve his adopted country.

The SOR alleges and Applicant admits making multiple deliberately false statements about his background during the security clearance process. (SOR ¶¶ 1.a, 1.b, 1.f, and 1.g). Each is discussed briefly below.

First, Applicant made a false statement about his employment history on his 2017 security clearance application when he omitted that he had been disciplined by the Army National Guard after he tested positive for marijuana in March 2014. The discipline consisted of a counseling session from his first sergeant, being placed into a non-promotable status, attendance at a drug-counseling session, and completion of an online drug course. (Tr. 35-37) He was not disciplined under the Uniform Code of Military Justice (UCMJ).

Second, Applicant made a false and misleading statement about his employment history on his security clearance application when he omitted he had been terminated from a part-time job as a sales coordinator for a hotel. Instead, he stated on his security clearance application that he left the job due to a conflict of interest in that he was dating his supervisor. He was terminated or fired due to theft of two complimentary tickets for a college basketball game.

Third, Applicant made a false statement during a December 2017 background investigation interview when he omitted testing positive for marijuana during his service with the Army National Guard. He was asked several times if there was any adverse event he could recall. Only when specifically confronted about the 2014 positive drug test did he admit it.

Fourth, Applicant made a false statement during a December 2017 background investigation interview when he denied or could not recall that he may have been terminated or fired from his employment with the hotel in 2014. Only when specifically confronted about his termination for theft of the basketball tickets did he admit to the incident, which he did not consider serious or significant due to the low value of the tickets.

Applicant denied the falsification allegations in SOR ¶¶ 1.c, 1.d, and 1.e. The three matters are discussed briefly below.

First, Applicant made a false statement about his employment history on his security clearance application when he denied leaving the job at the hotel due to any of the following events: (1) fired; (2) quit after being told you would be fired; (3) left by mutual agreement following charges or allegations of misconduct; or (4) left by mutual agreement following notice of unsatisfactory performance. As discussed above, he left this job when he was fired for theft of the basketball tickets. His convoluted explanation that his answer to the question was not deliberately false is not credible.

Second, Applicant did not make a false statement about his history of drug use on his security clearance application when he disclosed the single use of marijuana, but provided an incorrect date of 2012 instead of the correct date of 2014. Accordingly, his failure to list the 2014 date on his security clearance application was not a deliberately false statement.

Third, Applicant made a false statement about his history of drug use on his security clearance when he denied ever being ordered, advised, or asked to seeking counseling or treatment as a result of using illegal drugs or controlled substances. He answered the question in the negative and did not disclose the counseling session required by the Army National Guard in 2014. He explained that since he was not required to attend a rehabilitation program or a hospital, he felt the counseling required by the Army National Guard did not pertain to this question. Applicant's explanation is not credible.

Law and Policies

This case is adjudicated under Executive Order (E.O.) 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* (AG), effective June 8, 2017.

It is well-established law that no one has a right to a security clearance.¹ As noted by the Supreme Court in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”² Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security. In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.³ The Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.⁴

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.⁵ Under the Directive, the parties have the following burdens: (1) Department Counsel has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted; (2) an applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven; and (3) an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁶

Discussion

Under Guideline E, personal conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about a person’s reliability, trustworthiness, and ability to protect classified or sensitive information. The concern is stated fully in AG ¶ 15.

In analyzing the facts of this case, the following disqualifying conditions apply:

AG ¶ 16(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; and

AG ¶ 16(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an

¹ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

² 484 U.S. at 531.

³ 484 U.S. at 531.

⁴ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

⁵ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

⁶ Directive, Enclosure 3, ¶¶ E3.1.14 and E3.1.15

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.

As set forth in the findings of fact, Applicant made multiple deliberately false statements during the security clearance process. He omitted derogatory information about his background when he completed his security clearance application, and he was less than candid during his background investigation.

In mitigation, I have considered all the favorable information Applicant presented, including Exhibits A-H. I specifically note the numerous favorable letters of recommendation. I have also considered the mitigating conditions under AG ¶ 17, and none apply in Applicant's favor. Making deliberately false statements during the security clearance process is serious misconduct, and it is not easily explained away, excused, or otherwise mitigated. Based on the record, Applicant's misconduct is far too serious to be mitigated.

Following *Egan* and the clearly consistent standard, I have doubts and concerns about Applicant's reliability, trustworthiness, good judgment, and ability to protect classified or sensitive information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also considered the whole-person concept. I gave particular consideration to his honorable military service. I conclude that he has not met his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

The formal findings on the SOR allegations are:

Paragraph 1, Guideline E:	Against Applicant
Subparagraphs 1.a - 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e - 1.g:	Against Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Eligibility denied.

Michael H. Leonard
Administrative Judge