



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 REDACTED) ISCR Case No. 19-03797
)
 Applicant for Security Clearance)

Appearances

For Government: Raashid S. Williams, Esq., Department Counsel
For Applicant: *Pro se*

04/13/2022

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant has not mitigated the personal conduct security concerns raised by his pattern of false and inconsistent statements made on his security clearance application and during interviews with U.S. government investigators. Clearance eligibility is denied.

Statement of the Case

On July 30, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline E, personal conduct. The SOR explained why the DCSA CAF was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DCSA CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) 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 within the DOD on June 8, 2017.

Applicant responded to the SOR allegations on July 31, 2021, and requested a decision on the written record in lieu of a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On September 29, 2021, the Government submitted a File of Relevant Material (FORM) consisting of a statement of the Government's position and 11 documents pre-marked as Item 1 through Item 11. The SOR and Applicant's SOR response were included as Item 1 and Item 2, respectively.

In the FORM, Applicant's attention was directed to a summary report of his personal subject interview (PSI), which took place on February 13, 2017. (Item 4.) Even though Applicant had adopted the summary report of his PSI with some clarifications and corrections on March 9, 2020, he was advised that he could comment on whether the PSI summary was accurate, make any corrections, and object to inclusion for lack of authentication. DOHA forwarded a copy of the FORM to Applicant three times: on October 7, 2021 and November 20, 2019, through two different companies; and on January 18, 2022, to him at his home address of record. Applicant was instructed that any response was due within 30 days of receipt. Applicant received the FORM on January 23, 2021. No response was received by the February 22, 2022 due date for his FORM response.

On March 18, 2022, the case was assigned to me to determine whether it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant. I received the case file and assignment on March 28, 2022.

SOR Allegations and Answer

The SOR alleges under Guideline E that Applicant's access to a U.S. government agency's installation was revoked in June 2019 for a pattern of falsification and personal conduct found to pose an unacceptable risk to the government's physical assets and information systems (SOR ¶ 1.a). The SOR alleges in SOR ¶ 1.b that Applicant falsified his May 2016 Electronic Questionnaire for Investigations Processing (SF 86) by responding negatively to its inquiries regarding adverse employment information and by deliberately failing to disclose "that information as set forth in subparagraph 1.a, 1.b [sic], above." The SOR alleges in SOR ¶ 1.c that Applicant deliberately omitted material facts from his May 2016 SF 86 by not listing "the employment as set forth in subparagraph 1.a, 1.b, above." SOR ¶¶ 1.b and 1.c concern the alleged deliberate failure to disclose the employment information in SOR ¶ 1.a. The references to SOR ¶ 1.b in the text of the allegations concerning SF 86 falsification (SOR ¶ 1.b) and omission (SOR ¶ 1.c) appear to be drafting errors. The SOR also alleges under Guideline E that Applicant was fired from jobs in approximately March 2011 for timekeeping issues (SOR ¶ 1.d) and November 2010 for not being a good fit for the job and attendance issues (SOR ¶ 1.e). (Item 1.)

When Applicant responded to the SOR allegations, he admitted that he was denied access to the government agency's installation, but he denied that he intentionally falsified any information. He asserted that he responded on government forms to the best of his knowledge and recollection. About his failure to report the employment information in SOR ¶ 1.a, he explained that he was self-employed at the time and listed his consulting

company as his employer on his May 2016 SF 86. He denied recollection of any timekeeping issues at the employment alleged in SOR ¶ 1.d, and of receiving any verbal warnings for attendance while at the employment in SOR ¶ 1.e, adding that it was a “mutual separation without pressure to leave” that job. (Item 2.)

Findings of Fact

After considering the FORM, including Applicant’s July 2021 response to the SOR (Item 2), I make the following findings of fact:

Applicant is a 56-year-old naturalized U.S. citizen, who immigrated from Pakistan. He acquired his U.S. citizenship in May 1991. He was awarded a bachelor’s degree in June 1996 and a master’s degree in January 2003. (Items 3-4.) He has been married since March 2013. (Item 3.) He has one daughter, who was born in 2014. (Item 8.) He is currently being sponsored for security clearance eligibility.

On February 18, 2011, Applicant completed an SF 86 for a background investigation to work as a team lead with a federal contractor. The SF 86 was not included in the FORM, but a memorandum of record completed during an investigation and adjudication by another U.S. government agency for access to its headquarters in 2019 reflects that Applicant’s February 2011 SF 86 was inaccurate in several aspects. (Item 8.) Applicant was apparently issued a secret clearance on April 28, 2011 (Item 6), although other information indicates that the investigation initiated by the 2011 SF 86 was discontinued on April 4, 2012, with no OPM assessment. (Item 8.)

On May 24, 2016, Applicant completed and certified as accurate an SF 86 for a consulting position with a DOD agency. (Items 3, 8.) He denied that he ever held a foreign passport, even though he had entered the U.S. in 1986 on a Pakistan passport. He reported that he has worked as a self-employed program or project manager since January 1994. He listed only two other employments on his SF 86. He indicated that he worked as a team leader for a federal contractor from January 2010 until February 2011, when the project was completed, and then as a web developer for another federal contractor from February 2011 to April 2011, when that job was completed. He responded negatively to the SF 86 inquiries concerning whether, in the last seven years, he was fired from a job; quit a job after being told he would be fired; left a job by mutual agreement following charges or allegations of misconduct; left a job by mutual agreement following notice of unsatisfactory performance; or received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as violation of a security policy. (Item 3.)

Applicant also responded negatively on his May 2016 SF 86 to whether the U.S. government had ever investigated his background or granted him a security clearance or access eligibility. He answered negatively to a question concerning any foreign travel outside the United States in the last seven years. (Item 3.)

On February 13, 2017, Applicant had a PSI with an Office of Personnel Management (OPM) investigator as part of his background investigation for work with the

Defense agency. He admitted that he had previously held a Pakistan passport and claimed that he did not list it on his SF 86 because the question was unclear. He expressed his belief that his Pakistan passport had been destroyed and stated that he surrendered it in order to obtain U.S. citizenship. When asked about his current residence, Applicant stated that he lived with his wife and daughter. He had not listed a daughter on his SF 86. He claimed she had been born after he completed his SF 86. Regarding his listed employments, Applicant stated that, as a self-employed consultant, he had done some classified work for the DOD in the past. He related that his work for the employers listed on his SF 86 was through his consulting business. Applicant denied any other employment in the preceding ten years. Information had surfaced during Applicant's background investigation that he had been fired from a job in March 2011 for not being professional in submitting his work hours (timekeeping issues) and from a previous employment as a senior principal consultant in November 2010 and was ineligible for rehire after receiving warnings about his attendance (SOR ¶ 1.e). When confronted with that employment information, Applicant stated that he had not violated any oral or written agreements with the employer in SOR ¶ 1.e, and that he had left the job because he was relocating. Applicant denied any difficulties in that job. He claimed to not recall being fired from the company in SOR ¶ 1.d for timekeeping issues. (Item 4.)

Regarding foreign travel, Applicant stated that he went on a honeymoon cruise to Europe. He explained that he did not list the trip on his May 2016 SF 86 due to oversight. He admitted that the government had investigated his background in the past, and he had held a secret clearance for work for the DOD. He cited oversight as the reason for the omission of his previous background investigations on his May 2016 SF 86. (Item 4.)

On September 6, 2017, Applicant notified the DOD that he had a new job, did not need a clearance, and would not cooperate with the background investigation. (Item 9.) The investigation requested by the DoD agency and initiated by the May 2016 SF 86 was closed on February 12, 2018, with an indication of major issues that would be disqualifying. (Item 8.) The issues of concern were not specifically delineated in the report showing the closure of the investigation.

On April 1, 2019, Applicant was hired by a contractor to support an information technology support services contract with a non-DOD government agency. Reportedly based on the DISCO eligibility determination from April 2011, Applicant was briefed for secret-level access by the contractor who hired him in 2019. (Item 6.) Applicant was interviewed by a personnel security specialist for installation access eligibility. (Item 9.) The security specialist noted discrepancies from Applicant in the dates concerning the establishment of his consulting company. When she asked him about his employment termination by the company in SOR ¶ 1.e, Applicant related that he was asked to do information technology work that was not in his field, when he was hired for other work. He admitted that he was verbally told to not return to work for the company. He denied ever having heard of or having worked for the company in SOR ¶ 1.d or the company listed on his May 2016 SF 86, which he had indicated during a 2012 investigation was a sister company to the company in SOR ¶ 1.d. An investigator contacted some employment verifiers and the references listed on his May 2016 SF 86. Some of information they

provided about Applicant's birth country (France, Egypt); foreign travels (a previously undisclosed trip with his spouse to Europe from December 2013 to January 2014, periodic travel to France); and education (attended Columbia, has a doctorate degree) was discrepant with information Applicant reported. When confronted about the discrepancies during an interview with a security specialist in 2019, Applicant responded that these things were "just not true." (Item 8.)

During the 2019 investigation by the non-DOD government agency, records were accessed from the OPM which reportedly showed that Applicant had completed 12 SF 86 forms for background investigations since 2005, including for four investigations by the OPM. Eight of the investigations were discontinued, but he was granted secret clearance eligibility after one investigation. At one point, he was granted interim access eligibility for top secret information, although it was downgraded to secret when the investigation was discontinued. Thirty-five separate companies requested that he maintain a secret clearance. (Item 8)

On May 24, 2019, the chief of the security office at the government agency's headquarters issued a determination of unfavorable fitness for Applicant to work as a cloud data architect at its headquarters. The agency made a determination that the issuance of a Personal Identity Verification (PIV) card to Applicant presented an unacceptable risk based on his dishonest conduct and a reasonable belief that he made material, intentional false statements in connection with his contract employment. (Items 10, 11.) Applicant was found to have been fired from the employments in SOR ¶¶ 1.d and 1.e; to have omitted from his SF 86 his in-laws, an address, employments, the adverse employment terminations, his foreign travels, his previous possession of a foreign passport; and his previous background investigations. He was also found to have provided discrepant information about the dates for establishment of his consulting company. (Item 11.)

On June 19, 2019, the government agency revoked Applicant's access to its installation for a pattern of falsification and personal conduct discovered during his background investigation. (Item 5.) On July 11, 2019, Applicant had a meeting with the chief of the protective services at the installation. Applicant failed to provide sufficient mitigating information to resolve the concerns that he presented an unacceptable risk to the government's physical assets and information systems at the installation. The revocation of access was for three years at which time Applicant can reapply for a position with the government agency. (Item 7.)

On July 11, 2019, Applicant resigned from his employment with the company that hired him in April 2019 to support an information technology contract at the government agency's headquarters. The decision to revoke Applicant's access to its headquarters and its installation rendered him unemployable by the federal contractor. On July 30, 2019, the contractor filed an adverse information report to ensure that the DCSA was aware that Applicant's access to the non-DOD installation had been revoked. At least one clearance reporting system showed that Applicant was still eligible for access at the secret level. (Item 6.)

On March 9, 2020, Applicant adopted the OPM investigator's summary report of his May 2017 PSI with some clarifications. Regarding his Pakistan passport, Applicant indicated that his mother found his two Pakistan passports, which were expired. He gave the dates for his honeymoon travel. Regarding his employment terminations from the companies in SOR ¶¶ 1.d and 1.e, he again denied any recall of any timekeeping issues with the employer in SOR ¶ 1.d or any verbal warnings for attendance at the company in SOR ¶ 1.e, and continued to assert that his separation from that job was mutual. (Item 4.) In response to the SOR, Applicant denied any intent to falsify information. (Item 2.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has 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). 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 required to be considered 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 the adjudicative process. The administrative judge's overall 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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. 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 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Section 7 of EO 10865 provides that 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

Personal Conduct

The security concerns about personal conduct are articulated in AG ¶ 15, which provides 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. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

Regarding SOR ¶ 1.a, Applicant does not dispute that his access to a non-DOD government agency’s installation was revoked in July 2019 for what adjudicators and security officials with that agency concluded was a pattern of falsification and personal conduct. Personal conduct security concerns are raised by the pattern of inconsistencies and omissions that led to the revocation of access eligibility.

Among the discrepancies and omissions, which are amply detailed in Items 8, 9, and 11 of the FORM, are omissions from Applicant’s May 2016 SF 86 that are not separately alleged in the SOR but were issues that led to the revocation of his facility access to the non-DOD installation in 2019. The evidence shows that Applicant responded negatively to SF 86 inquiries concerning whether he ever held a foreign passport, whether he traveled abroad in the last seven years, and whether his background had ever been investigated by the government for clearance eligibility. He did not indicate on his SF 86 that he had a child, and explained that she had been born after he completed the form. The evidence showed that Applicant held a Pakistan passport to enter the United States; traveled on a honeymoon cruise in 2013 and to Europe in 2014; had several background investigations over the years before his May 2016 SF 86; and has a daughter born in 2014. He also omitted employment information from his SF 86. On being confronted with the omitted employments during his February 2017 PSI, he claimed he had no problems at the company alleged in SOR ¶ 1.e and asserted he had no recall of being fired for timekeeping issues from the company in SOR ¶ 1.d. More recently, when interviewed by the government agency for access eligibility to its headquarters, he claimed he did not recall ever working for the company in SOR ¶ 1.d. The evidence of omission from his SF 86 and of discrepant information provided during his February 2017 PSI and his more recent interviews for work with the non-DOD government agency establish the following disqualifying conditions under 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

(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.

Regarding SOR ¶¶ 1.b and 1.c, the SOR alleges under SOR ¶ 1.b that Applicant falsified his May 2016 SF 86 by not disclosing the adverse employment information set forth in SOR ¶ 1.a, and under SOR ¶ 1.c that he failed to list the employment in SOR ¶ 1.a when he was required to list all his employment activities from the present and working back ten years. If the employment information Applicant is alleged to have deliberately omitted was his revocation of access to a non-DOD installation in 2019, Applicant cannot be held to have falsified a May 2016 SF 86 form by not disclosing a future consequence of his pattern of dishonesty or omission or an employment that had not yet occurred.

Among the cited pattern of dishonesty that led to the revocation of installation access to Applicant in 2019 was his omission from his May 2016 SF 86 of his involuntary terminations from the jobs alleged in SOR ¶¶ 1.d and 1.e. The evidence shows Applicant did not list his employment with the company in SOR ¶ 1.e on his May 2016 SF 86. Moreover, with respect to the employment in SOR ¶ 1.d, even if I accept that there is a connection between that company and the company listed on his SF 86 as his employer from January 2010 to February 2011, Applicant claimed on his SF 86 that he left the job when the project was completed. He did not report that he had been fired. However, neither SOR ¶ 1.b nor ¶ 1.c specifically allege that Applicant deliberately omitted that adverse employment information. The Appeal Board has held in ISCR Case No. 12-11375 at 6 (App. Bd. June 17, 2016) that administrative pleadings should be liberally construed and easily amended. However, the SOR allegations in ¶¶ 1.b and 1.c are unintelligible as written.

Applicant disputes the involuntary employment terminations from the companies alleged in SOR ¶¶ 1.d and 1.e. The personnel records from those employers, which could show the reason for his employment ending, are not in evidence. Investigators for the DOD in 2017 and for another government agency in 2019 reported Applicant was fired for timekeeping and attendance issues, respectively, based on information gleaned during their investigations of Applicant's background. There is a presumption of regularity in the conduct of one's official duties, and there is no evidence whatsoever that any of the investigators or interviewers made a false report. Furthermore, when interviewed during his investigation for access to the non-DOD government installation, Applicant admitted that he was told not to return to work for the employer in SOR ¶ 1.e. If the decision for him to leave was mutual, it was under adverse circumstances. Applicant's lack of credibility because of the pattern of omissions and inconsistent statements makes it difficult to believe he was

not fired. The employment terminations establish the security concerns under AG ¶ 16(d), which provides:

(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:

(3) a pattern of dishonesty or rule violations.

Applicant has the burden of demonstrating sufficient mitigation to overcome the personal conduct security concerns raised by his pattern of falsification and inconsistent statements (SOR ¶ 1.a) and his involuntary terminations from two employments for cause (SOR ¶¶ 1.d and 1.e). The following mitigating conditions under AG ¶ 17 may apply in whole or in part:

(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

(f) the information was unsubstantiated or from a source of questionable reliability.

Applicant made some corrections to his May 2016 SF 86 during his February 2017 interview. He admitted that he had previously held a Pakistan passport; that he had a daughter; that he had taken a honeymoon cruise to Europe; and that his background had been investigated previously by the DOD for a secret clearance in 2009 or 2010. AG ¶ 17(a) does not fully apply, however. He claimed that he did not disclose on his SF 86 that he held a Pakistan passport because the question on the SF 86 was unclear. He did not elaborate as to what was confusing about the relevant SF 86 inquiry ("Have you **EVER** been issued a passport (or identity card for travel) by a country other than the U.S.?). He asserted during his February 2017 PSI that his foreign passport had been surrendered to obtain his U.S. citizenship, but in March 2020 asserted that his mother had found two

expired Pakistan passports for him. He claimed during his PSI that his daughter was born after he completed his May 2016, when she had been born in 2014. He did not report travel to Europe in 2014 that surfaced during his more recent interviews for access to the non-DOD installation.

Furthermore, Applicant had to be confronted by the OPM investigator with the information of his employment terminations from the companies in SOR ¶¶ 1.d and 1.e. He denied any recall of being fired by the employer in SOR ¶ 1.d and claimed that he had no difficulties during his employment with the company in SOR ¶ 1.e. He subsequently told a security specialist during an interview for access eligibility to the non-DOD government installation that he never heard of or worked for the company in SOR ¶ 1.d. AG ¶ 17(c) has some applicability because of the passage of time since he was fired. Even so, he demonstrates a lack of reform by continuing to deny that the employments ended under unfavorable circumstances. Applicant's denial of any intentional false statements in other aspects as well cannot be reconciled with the evidence of omissions and inconsistencies. AG ¶ 17(d) was not established. The personal conduct security concerns are not mitigated.

Whole-Person Concept

In assessing the whole person, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). The analysis under Guideline E is incorporated in my whole-person analysis.

The security clearance adjudication involves an evaluation of an applicant's judgment, reliability, and trustworthiness in light of the security guidelines in the Directive. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). For the reasons noted above, I am unable to conclude that it is clearly consistent with the national interest to grant or continue security clearance eligibility for Applicant at this time.

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:

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|---------------------------|-------------------|
| Paragraph 1, Guideline E: | AGAINST APPLICANT |
| Subparagraph 1.a: | Against Applicant |
| Subparagraphs 1.b-1.c: | For Applicant |
| Subparagraphs 1.d-1.e: | Against Applicant |

Conclusion

In light of all of the circumstances, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance.

Elizabeth M. Matchinski
Administrative Judge