



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



In the matter of:)	
)	
)	ISCR Case No. 21-00602
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrew Henderson, Esq., Department Counsel
For Applicant: *Pro se*

August 2, 2022

Decision

Lokey Anderson, Darlene D., Administrative Judge:

On April 9, 2020, Applicant submitted a security clearance application (e-QIP). (Government Exhibit 1.) On April 30, 2021, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline E, Personal Conduct. The action was taken 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*, effective within the DoD after June 8, 2017.

Applicant answered the SOR on May 5, 2021, and requested a hearing before an administrative judge. The case was assigned to me on April 12, 2022. The Defense Office of Hearings and Appeals issued a notice of hearing on April 20, 2022, and the hearing was convened as scheduled on May 17, 2022. The Government offered three exhibits, referred to as Government Exhibits 1 through 3, which were admitted without objection. The Applicant presented no exhibits, however, Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on June 6, 2022.

Findings of Fact

Applicant is 34 years old and unmarried with no children. He holds a Bachelor's degree in Psychology. He is employed as a Protective Security Officer for a defense contractor. Applicant is seeking to obtain a security clearance in connection with this employment.

Guideline E – Personal Conduct

The Government alleged that Applicant is ineligible for a clearance because he engaged in conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that raise questions about his reliability, trustworthiness, and ability to protect classified or sensitive information.

Applicant has a history of disregarding rules and regulations reflecting a pattern of poor judgment, unreliability and untrustworthiness. After high school, Applicant attended college at a University. In August 2010, as a first year college student, at the age of 21, Applicant lived in student housing, and was employed as a student housing advisor. Applicant knew that the University was a dry campus and alcohol was not permitted on campus. Despite this, Applicant purchased alcohol and brought it on campus. Applicant testified that because he had noticed his Senior Housing Advisor, who manages all of the apartments in the building, bring alcoholic beverages onto the campus, he felt that he should also be able to do so. Applicant states that he was merely following his leadership. (Tr. p. 18.) A housing check was performed on Applicant's room, the alcohol was discovered, and he was terminated from the job. (Government Exhibit 2.)

In October 2011, Applicant was employed at a clothing store. Applicant was assisting a female customer with items for her brother. He spent several hours helping them find suitable items to purchase and they spent several hundred dollars. At the end of the sale, Applicant asked the woman for her phone number. Applicant stated that she gave him her number and did not appear to be offended. On Applicant's next day at work, Applicant was notified by his manager that the customer had made a complaint and felt uncomfortable about providing her telephone number to Applicant. Applicant was told by his manager that he was going to be written up as a result of the complaint. In lieu of termination, Applicant decided to leave the company because he thought he was wrongfully disciplined. (Tr. p. 26 and Government Exhibit 2.)

In April 2015, while working for employer A, Applicant received his first written warning for making an inappropriate sexual comment to a female employee at work. On this occasion, Applicant states that he was talking with several employees when he made a joke about a female employee who was eating a popsicle, and referenced her performing oral sex on her boyfriend. (Tr. p. 29.)

In June 2016, while still working for employer A, Applicant received his second written warning, this time for being in personal space and inappropriate touching, when he adjusted the bra strap that was showing on a female colleague. Applicant explained

that she was wearing a very low-cut tank top and her bra strap had fallen down. He thought that her top was inappropriate and too revealing. As a friend to her, he lifted her bra strap up on her shoulder, and told her that he just wanted to make sure that she was okay. He said, she thanked him. (Government Exhibits 2 and 3.) Applicant believes his intentions were pure and right. He believes that since then, he has learned to be more professional.

In January 2017, Applicant was terminated from his employment with employer A for inappropriate comments. On this occasion, Applicant was overheard on the telephone with a contractor. After giving him instructions on how to download a company application on the computer, the contractor stated that he was not good with technology, but that his wife was good with that. Applicant testified that he congratulated the contractor on the fact that his wife was the one that handled the technology, while he did the hard work. Applicant stated, "God gave us women to do the tech stuff. You do the hard work." (Tr. p. 34.) Applicant's conversation was heard by a coworker and believed it to be sexist and anti-feminist. (Government Exhibit 2.)

In June 2019, Applicant received a written warning from his employer for inappropriate conduct directed toward a female co-worker. Applicant went behind the female co-worker and hugged her from behind. She said, "Don't hug me from behind because you're hugging my fat rolls." Applicant then stated, "Okay, instead of touching your fat rolls, I'm going to touch your chest." (Tr. pp. 38-39.) Applicant testified that, after the fact, he knew it was wrong, and that he had made a bad mistake again. (Tr. p. 40 and Government Exhibit 2.)

In September 2019, Applicant was terminated from his employment for falsifying his time card. Applicant explained that there was a security post that he was supposed to cover and he forgot to do it. When he realized that he forgot to cover it, he falsified the time sheet to indicate that he had covered it. When he was asked if he covered the post, he stated that he had. Ultimately, when it was all sorted out, Applicant acknowledged that he had lied, and that he had falsified the time sheet.

In January 2020, Applicant began working for his current employer. In March 2021, he received a written warning for being out of uniform. Applicant explained that the company policy requires him to wear his uniform, and he is allowed to wear a white undershirt. He is not allowed to wear long sleeves. It was a cold morning, and Applicant's jacket was not providing enough warmth. Applicant put on a long sleeve white thermal underneath his uniform with his body armor and his jacket. Applicant took his jacket off, and the client saw it. The client called his boss and reported that the Applicant was out of uniform. Applicant was written up.

Applicant states that none of his actions were ever done to be deliberately harmful or to make anyone uncomfortable. Applicant has received counseling and training to help him to understand and to prevent his misconduct and inappropriate behavior. He has received supervisory management and operation management training consisting of 30 to 40 courses on professional behavior and sexual harassment training. He testified that whenever he made a mistake in the past, he always did the

training. (Tr. p.45.) He has recently started group therapy sessions, through his church, to help with his thought processes and how to properly interact with relationships. He has already attended two sessions. He believes that he has made tremendous strides in self-growth, mental clarity and mental judgments.

Policies

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, administrative judges apply the guidelines 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), 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.

Directive ¶ E3.1.14, requires the Government to present evidence that establishes 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."

A person who applies 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.

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 the personal conduct guideline 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 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 conditions are potentially applicable:

(c) credible adverse information in several in several adjudication 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, supports a, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information;

(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 while-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; and

(3) a pattern of dishonesty or rule violations.

AG ¶ 17 provides conditions that could mitigate security concerns. I have considered each of the mitigating conditions under AG ¶ 17 below:

(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;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

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

(g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Since 2010, Applicant has exhibited a pattern and practice of questionable decision making and inappropriate conduct in the work environment. As a result, he has received a number of written warnings from his employers, and has been terminated from at least three jobs. Terminations of this sort are highly unusual and only justified if the misconduct is serious and egregious. For eleven years, from 2010 to 2021, Applicant's conduct reflects various episodes of serious immaturity and a lack of common sense. In totality, these episodes show a pattern of poor judgment, inappropriate behavior, a lack of candor, and dishonesty, that is unacceptable in a work environment. Even now, Applicant has not taken full responsibility for his misconduct and in most cases still does not seem to fully understand what was wrong with his behavior. To be eligible for access to classified information one's overall character and conduct must consistently show pristine honesty, integrity, good judgment and reliability. Applicant's serious blemish on his employment record raises serious questions about his judgment, reliability, and trustworthiness. Under the particular circumstances of this case, Applicant is not found to be sufficiently trustworthy to access classified information. None of the mitigating conditions are applicable. Accordingly, Guideline E is found against the Applicant.

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 considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guideline E in my whole-person analysis. Applicant's long history of inappropriate conduct is unacceptable in a work environment. He is currently participating in group therapy to help him with his thought processes and how to properly interact with others in a professional environment. He is commended for this, and encouraged to continue his training in this area.

At this time, Applicant has not demonstrated that he can be trusted with the national secrets. This is not an individual with whom the Government can be confident to know that he will always follow rules and regulations, and do the right thing, even when no one is looking. He is not qualified for access to classified information, nor is it clear that the information will be properly protected. Applicant does not meet the qualifications for a security clearance.

Overall, the record evidence leaves me with many questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Personal Conduct security concerns.

Formal Findings

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

Paragraph 1, Guideline E:	AGAINST APPLICANT
Subparagraphs 1.a: through 1.g.	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge