



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



In the matter of:)	
)	
)	ISCR Case No. 21-01152
)	
Applicant for Security Clearance)	

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

August 31, 2022

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On September 16, 2021, Applicant submitted a security clearance application (e-QIP). (Government Exhibit 1.) On December 22, 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 10865 (EO), *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 for Determining Eligibility for Access to Classified Information*, effective within the DoD after June 8, 2017.

Applicant answered the SOR on January 14, 2022, and requested a hearing before an administrative judge. The case was assigned to me on May 11, 2022. The Defense Office of Hearings and Appeals issued a notice of hearing on May 13, 2022, and the hearing was convened as scheduled on July 5, 2022. The Government offered three exhibits, referred to as Government Exhibits 1 through 3, which were admitted

without objection. The Applicant offered one exhibit, referred to as Applicant's Exhibit A, which was admitted without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on July 25, 2022.

Findings of Fact

Applicant is 43 years old. He is unmarried and has one child. He has two years of college and military training. He holds the position of Quality Test Inspector. He is seeking to obtain a security clearance in connection with his 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, all of which raise questions about his reliability, trustworthiness, and ability to protect classified.

Applicant served in the U.S. Navy from August 2000 to March 2011. During his military career, he underwent three separate deployments, one involving war. His highest rank earned was an E-4, Petty Officer Third Class. He received an honorable discharge. He was issued his first security clearance in the military.

After leaving the military, Applicant went to work in 2013 for a defense contractor, where he remains employed. Applicant admits that he struggles with the impact and effects of what he believes to be Post-Traumatic Stress Disorder (PTSD) from his experiences during his military deployments. Although Applicant has never undergone a thorough psychiatric evaluation, he has sought out help from his company Employee Assistance Program (EAP), and has received counseling on two separate occasions.

Applicant admits to a history and pattern of inappropriate, uncontrolled, emotional outbursts, getting upset, yelling, and swearing in front of his co-workers in the workplace. He blames these outbursts on how other people speak to him. He admits that his ability to maintain composure is limited by outside stressors that cause him to become upset more easily in the workplace. Applicant's misconduct is against the company policies, rules, and regulations, and is clearly prohibited. Applicant admitted that he was first spoken to about his unprofessional, inappropriate, emotional outbursts in the workplace in either 2014 or 2015. (Tr. p. 73.) He has been verbally counseled on four separate occasions, received two written warnings, and two suspensions for this misconduct. (Tr. 73-74.)

1.a. In September 2016, Applicant agreed to submit to a company EAP assessment after he posted information on social media expressing anger toward others and stating that he was legally able to purchase a firearm. An investigation of this matter revealed that Applicant was experiencing a medical issue and was not receiving the required medication. Applicant agreed to attend EAP counseling sessions with monitoring conducted by the company. He was not disciplined by the company on this occasion.

Applicant stated that he completed six one-hour counseling sessions arranged by his company. Applicant claims that his media posts were taken out of context. He states that his reference to the gun was expressing his interest in taking up a new hobby of target shooting. The only gun he has ever owned was when he was in the military. (Applicant's Answer to SOR.)

1.b. On February 14, 2017, Applicant engaged in a verbal argument with an employee screaming and using profanity the workplace. In discussion with his manager, Applicant agreed to take vacation time and leave work early that day. (Applicant's Answer to SOR, Government Exhibit 3, and Tr. p. 75.)

1.c. On February 27, 2017, Applicant was removed from the workplace for outbursts of anger involving threatening and intimidating conduct. Applicant engaged in a verbal argument with another employee screaming and using profanity. Applicant received a five-day suspension without pay. Applicant acknowledges his wrongdoing and accepted the Employee Performance Notice given to him by his management. On April 17, 2017, Applicant received an Employee Performance Notice addressing his prior misconduct and informing him that repetition of similar misconduct may be cause for further disciplinary action up to and including termination. (Government Exhibit 3 and Tr.p. 76-79.)

1.d. On October 21, 2019, Applicant was involved in a verbal disagreement between himself and another employee. Applicant was removed from the work place and suspended pending an investigation of his verbal outburst followed by a threatening statement. On this occasion, Applicant began arguing with a Tooling Inspector about his job assignment. Applicant was screaming, using profanity. The Tooling Inspector told Applicant that he could speak to his manager about it if he had an issue with the assignment. Applicant continued to scream and swear, and slammed a door, and then stated something to the effect, "You don't know what I can do." A threat management team was convened on October 2, 2019. As a result of the investigation, Applicant was removed from the workplace. He received a six-day unpaid suspension for inappropriate behavior, and was given a last change agreement. (Government Exhibit 3 and Tr. p. 23.)

1.e. Applicant completed a security clearance application dated September 16, 2021. (Government Exhibit 1.) Section 13A, Employment Activities, asked the Applicant, whether in the last seven years has he received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as a violation of security policy? Applicant answered, "No." This was not a correct answer. Applicant has in fact received several written warnings in the past seven years for workplace misconduct, specifically verbal outbursts, and threatening and intimidating misconduct in the workplace, including two suspensions. Applicant claims that he did not intentionally falsify any information in the security clearance application. Applicant states that he was focused on the "violation of security policy" clause of the question, and he did not consider the entire question like he should have. He has not violated any security policies to his knowledge and therefore he answered the question like he did. (Tr. pp. 78-80.)

Not alleged in the SOR is an incident that occurred in August 2020, shortly after news of a fire breaking out at the company facility. Applicant posted on facebook, a picture of a burned down guard shack and commented, "Not official yet but looks like I lost my job. I didn't get fired though, . . . the base did. . . I guess dreams do come true. I may get my wish to leave California. (Government Exhibit 3.) Applicant stated that he does not like living in California, is only living here because of his daughter, and was happy he could leave California. (Tr. pp. 70-71.)

Applicant was recently seen by a Veteran's Administration hospital and has more appointments scheduled to pursue help for his medical problem. Applicant recently lost a veteran friend to suicide. (Tr. p. 42.)

Applicant's security officer and a co-worker testified on Applicant's behalf. They both understand that he is sensitive and has difficulty in controlling his anger. They acknowledge that he has been inappropriate and unprofessional. They understand, however that he may be suffering from symptoms of PTSD that is not being treated. They consider Applicant to be a hard worker, and state that he is loved by those he works closely with. They recommend Applicant for a security clearance. (Tr. pp. 21-31, and 87-102.)

A letter of recommendation from an Engineer that works with the Applicant states that Applicant is one of the hardest workers he has ever met. He is a valued team member and well-liked by others. He recommends him for a security clearance. (Applicant's Exhibit A.)

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. 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. 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.” The applicant has the ultimate burden of persuasion to obtain a favorable clearance 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 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 relating to the guideline for 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. Three are potentially applicable in this case:

(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;

(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

(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
- (4) evidence of significant misuse of Government or other employer's time or resources.

First, Applicant was either careless or not candid when he answered the question on his security clearance application about his past written warnings, reprimands and suspensions he has received by his employer in the last seven years. In either case, he must be able to read and understand the simple meaning of the question on the application, and answer it correctly, in order to be found eligible for access to classified information. Second, although it was brought to my attention that profanity is often used in the workplace, it is not acceptable here. Applicant's history of inappropriate personal conduct at work has escalated involving emotional outbursts, abusive language, including profanity, intimidation, screaming, and yelling at co-workers that is egregious, outrageous and against company policy and DoD standards of decency and professionalism. Applicant's conduct creates a hostile, uncomfortable, and possibly violent workplace. Applicant's conduct shows noncompliance with rules, procedures and guidelines designed to make the workplace a pleasant, peaceful and safe environment. Applicant's profanity and social media posts go beyond just being disrespectful. Applicant's consistent pattern of behavior is indicative of an insider threat. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 17 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 17 including:

- (a) the individual made prompt, good faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully.
- (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

None of these apply. Applicant's misconduct is egregious. From the evidence presented, Applicant has been more than disrespectful to his coworkers and others in the workplace without justification or excuse. Applicant has received several notices from his management for misconduct arriving from his uncontrolled emotional outbursts. and has been told that if it happens again, he may be confronted with termination. The extreme unprofessionalism here is not to be tolerated by Defense Department or its contractors.

Applicant is required to follow all DoD rules, regulations and company policies and procedures. A security clearance is a privilege and not a right. To be found eligible, it must be clearly consistent with the national interests to grant or continue a security clearance. This decision must be made in accordance with the DoD Directive and its guidelines. Based upon the information presented, Applicant's history of misconduct in the workplace shows poor judgment, unreliability and untrustworthiness and prevents him from being eligible for access to classified information. The Personal Conduct guideline is found against 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.

Applicant testified that he is seeking help with the Veteran's Administration services for his uncontrolled outbursts and related problems. This is a step in the right direction. I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I conclude Applicant has not 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: AGAINST APPLICANT

Subparagraphs 1.a. through 1.e. 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 or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge