



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



| | | |
|----------------------------------|---|------------------------|
| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 22-00391 |
| |) | |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: *Pro se*

January 26, 2023

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On August 12, 2020, Applicant submitted a security clearance application (e-QIP). (Government Exhibit 1.) On March 31, 2022, 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 May 3, 2022, and requested a hearing before an administrative judge. The case was assigned to me on August 22, 2022. The Defense Office of Hearings and Appeals issued a notice of hearing on September 15, 2022, and the hearing was convened as scheduled on November 16, 2022. The Government offered two exhibits, referred to as Government Exhibits 1 and 2, which were admitted

without objection. The Applicant offered no exhibits. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on November 29, 2022.

Findings of Fact

Applicant is 27 years old. He is unmarried and has no children. He has a Bachelor's degree. He holds the position of Systems Engineer. 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 information.

Applicant was born in Kabul, Afghanistan in 1995. He relocated to the United States with his family in 2004. He became a naturalized U.S. citizen in 2006. He obtained his Bachelor's degree in 2019. He began working for a defense contractor in September 2020. He has never held a security clearance before. (Tr. p. 21.)

Applicant completed a security clearance application on August 12, 2020. (Government Exhibit 1.) In response to Section 18, concerning "Relatives," Applicant failed to disclose his brother, as required. Applicant testified that he did not want to be associated with his brother and so he did not list him on the application. (Tr. p. 26.) When Applicant completed the application, this brother was incarcerated in prison for auto theft. At some point he was released and placed on parole. He violated parole, and was sent back to prison. (Tr. p. 29.) Applicant later revealed that he withheld this information from the Government because he believed that it would negatively reflect upon him.

Applicant was interviewed by an OPM investigator on September 23, 2020. During the interview, Applicant stated that his parents were divorced, and he did not speak with his father and that he did not know his father's address. (Government Exhibit 2.) When confronted with conflicting information that he provided on his August 12, 2020, security clearance application, Applicant admitted that he deliberately lied to the investigator at the direction of his father. His father told him to say that he did not live with the Applicant, and that Applicant did not know what his father did for a living. (Tr. p. 31.) Applicant testified that when he met with the investigator for this interview, he was actually living with his father, mother, sister and younger brother. (Tr. p. 45.)

Applicant's father passed away in March 2022. When he was in Afghanistan, his father worked as a medical doctor. In the U.S., he worked for several years as a linguist for the U.S. government. In 2014, he opened a restaurant.

Applicant currently resides with his older brother, who is an Engineer, and his mother and younger brother. Applicant's mother is not employed outside of the home. She remains in regular contact with her large family in Afghanistan. Specifically, her mother, father, grandparents, and siblings who all reside in Afghanistan. (Tr. p. 37.)

Applicant states that he realizes what he did was wrong and stupid, and he regrets his decisions. (Tr. p. 34-35.)

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. Two 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; 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.

Applicant deliberately failed to list his incarcerated brother on his security clearance application. He also lied to the investigator about the nature of his relationship with his father. He led the investigator to believe that he knew very little if anything about his father. He told the investigator that he did not live with his father and that he did not know what he did for a living. When, in actuality, Applicant lived with his father at the time and knew very well what he did for a living. 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 the mitigating conditions apply. 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. The decision must be made in accordance with the DoD Directive and its guidelines. Based upon the information presented, Applicant has not been truthful to the Government on his security clearance application, and during a personal interview with the Government representative. His character and integrity is highly questionable. His conduct shows poor judgment, unreliability, immaturity, and untrustworthiness, which 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.

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. and 1.b. | 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