



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



In the matter of:)	
)	
)	ISCR Case No. 21-02919
)	
Applicant for Security Clearance)	

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *Pro se*

02/28/2023

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant failed to mitigate the personal conduct and financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On April 15, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline E (personal conduct) and Guideline F (financial considerations). The action was taken under Executive Order (Exec. Or.) 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 (AG) implemented by DOD on June 8, 2017.

In Applicant's undated response to the SOR (Answer), he elected to have his case decided on the written record in lieu of a hearing. The Government's written case was submitted on September 29, 2022. A complete copy of the file of relevant material (FORM) was provided to Applicant and he was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on October 19, 2022. He did not submit a response. The case was assigned to me on January 18, 2023. The Government's documents, identified as Items 1 through 6 in its FORM, are admitted in evidence without objection.

Findings of Fact

Applicant denied the SOR allegations in his Answer. He is 31 years old, unmarried, and he does not have any children. He earned his high school diploma in 2012. He worked part time for a gas station convenience store from July 2012 to April 2013 before enlisting in the U.S. Army in April 2013. Beginning in September 2018, he worked as an Information Security Service Officer for a DOD subcontractor while on terminal leave from the U.S. Army. He was fired from that position in February 2020, as further discussed below. He has worked for his current employer, another DOD contractor, since a date not in the record. He was first granted a security clearance in approximately 2013. (Items 1-4)

The SOR alleges under Guideline E, and cross alleges under Guideline F, that Applicant overstated 52 hours in labor charges amounting to \$4,223, while working for a DOD subcontractor between December 2019 and February 2020, and his employment was consequently terminated. (SOR ¶¶ 1.a, 2.a) This allegation is established by a February 2020 incident report from the Defense Information System for Security (DISS) Case Adjudication Tracking System (CATS) and an April 2020 disclosure report submitted by the DOD subcontractor to the DOD Office of the Inspector General. (Items 1, 5-6)

Internal investigations conducted by both the DOD contractor and subcontractor identified Applicant's overstated labor charges, as alleged in the SOR. Applicant had no previous issues or infractions. His government branch head reported, however, that he had been coming in late, leaving early, sleeping at work, and delivering poor work. (Items 5-6)

During Applicant's October 2020 background interview, Applicant maintained that he never falsified his timecard. He indicated that he neither attempted to claim extra time nor did he claim time when he was made to stay late to make up for time that he was accused of owing the company for breaks. He described a culture in which his then-supervisor rotated employees' lunch breaks, timed his lunches and breaks, and made him stay after work to make up for time he took for his breaks. He complied with the internal investigation, and he indicated that he disclosed his termination on his SCA. He also indicated that he did not have any other employment incidents. (Item 4)

During his September 2014 background interview, Applicant indicated that he always followed security procedures. In his Answer, Applicant denied disobeying rules or guidelines, and stated that he follows all rules and guidelines of which he is informed. He also denied failing to live within his means, and he stated that he was current on his car loan payments and his mortgage. (Items 1, 3)

Policies

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 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, these guidelines are applied in conjunction with the factors listed in 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 access to classified information 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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 an 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 Exec. Or. 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* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline E: Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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. . . .

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant:

(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; . . . and

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

Applicant overstated 52 hours of labor charges, for a total of \$4,223, while employed by a DOD subcontractor from December 2019 through February 2020. Despite his denials, the allegation is established by investigative and government reports in the record. Further, he was terminated as a result of his actions. AG ¶¶ 16(d)(1) and 16(d)(4) apply.

Of the mitigating conditions under AG ¶ 20, I have determined the following to be relevant:

(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; and

(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.

Applicant had no previous issues or infractions until he overstated labor charges while employed by a DOD subcontractor from December 2019 through February 2020. Although he denies doing so, investigations conducted by both the DOD contractor and subcontractor identified his behavior, and he was consequently terminated. An employer's decisions and characterizations of events are entitled to some deference. ISCR Case No. 10-03886 at 4 (App Bd. Apr. 26, 2012), cited in ISCR Case No. 09-08394 at 7 (App. Bd. Jan. 16, 2013). Applicant failed to take responsibility for his conduct in his Answer. As such, I find that AG ¶¶ 20(c) and 20(d) are not established.

Guideline F: Financial Considerations

AG ¶ 18 expresses the security concern pertaining to financial considerations:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying. I considered as relevant ¶ 19(d), "deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust." For the reasons stated above under my Guideline E analysis, I find that AG ¶ 19(d) applies.

Of the mitigating conditions under AG ¶ 20, I have determined the following to be relevant:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast

doubt on the individual's current reliability, trustworthiness, or good judgment.

For the reasons stated above under my Guideline E analysis, I find that AG ¶ 20(a) is not established. No other Guideline F mitigating conditions apply.

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 the 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 have incorporated my comments under Guideline E and Guideline F in my whole-person analysis. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude that Applicant did not mitigate the personal conduct and financial considerations security concerns.

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:

Paragraph 1, Guideline E:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

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

Candace Le'i Garcia
Administrative Judge