



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



In the matter of:)
)
) ISCR Case No. 23-02417
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: *Pro se*

07/25/2024

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline E, personal conduct. Eligibility for access to classified information is denied.

Statement of the Case

On January 4, 2024, the Department of Defense (DOD) 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 (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on March 8, 2024, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM), and Applicant received it on April 10, 2024. He was afforded an opportunity to file objections and submit material in refutation,

extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 3. Applicant did not submit a response to the FORM or object to the Government's documents. The case was assigned to me on July 11, 2024. The Government's documents are admitted into evidence.

Findings of Fact

Applicant admitted both SOR allegations. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 31 years old. He earned a bachelor's degree in 2015 and a master's degree 2019. He is not married and has no children. He has worked for a federal contractor since June 2022.

Applicant completed a security clearance application in April 2023. Under Section 13A-Employment Activities, he disclosed that from July 2020 until March 2022, he worked for BX. Under the section "Reason for Leaving" he wrote, "Left to seek new opportunities after nature of role changed." Further in the section, it asked "For this employment have any of the following happened to you **in the last seven (7) years?**" It then provided a list of reason which included: "fired; quit after being told you would be fired; left by mutual agreement following charges or allegations of misconduct; left by mutual agreement following notice of unsatisfactory performance." Applicant responded "no."

In July 2023, Applicant was interviewed by a government investigator. He was asked to verify his employment with BX. He was then asked why he left this employment. He told the investigator it was a mutual decision to part ways because his department was moving in a direction that was based on electronic records and this did not align with his professional interests, as he wanted a more analytical and reporting type of work. He told the investigator that he left his employment under favorable conditions. He was then confronted by the investigator about being terminated from this employment. He replied that he was put on a performance improvement plan at the end of 2021, which was in place when he left. He believed he was doing well at his job and was surprised. He said he was told by his supervisor that some of his skills were not at the level the supervisor wanted them to be. He said he was not given any warning that he was being let go. He said he was informed over a Zoom meeting that they no longer wanted him working there and he was terminated. He did not recall signing any termination letter. He said he did not report the termination on his SCA because he does not like to think about it, and he did not view it as a termination at the time. He said he viewed his departure as more of a lay off because he was not the only one leaving the company. Applicant was asked directly by the government investigator whether he intentionally omitted his termination from the SCA and he said yes because he was embarrassed about it. He said he was disappointed over being terminated. (Item 2)

In November 2023, Applicant completed government interrogatories. He adopted the summary of his personal subject interview from July 2023. He added the following information about his employment history:

While working at [BX] in 2020, my relationship with the initiatives head [name] was contentious and me leaving was in part due to the hostile environment created. This negative experience has been shared by other former [BX] employees. I was not asked about my time at [BX] in detail and wanted to avoid getting too personal, but in the spirit of full transparency I am letting you know. (Item 3)

SOR ¶ 1.a alleged Applicant falsified his April 2023 SCA by answering “no” to questions about his employment and whether in the last seven years he had been fired from a job; quit after being told he would be fired; left by mutual agreement following allegations of charges of misconduct; or left by mutual agreement after notice of unsatisfactory performance. SOR ¶ 1.c alleged that Applicant falsified material facts during his July 2023 personal subject interview with a government investigator when he told the investigator that he left his employment after a favorably mutual decision, when in fact he deliberately concealed that he had been fired by BX and he failed to disclose this information due to embarrassment.

In Applicant’s answer to the SOR, he admitted ¶ 1.a and stated:

I was put on a performance improvement plan in the Fall of 2021 but was also told this was not a big deal that I was showing improvement with my work. At the beginning of March 2022, I was unexpectedly called into a meeting with my supervisor and told I was being fired because of the performance issues I was told were not an issue in the Fall. (Item 1)

Applicant admitted SOR ¶ 1.b which alleged he had been fired from his employment with BX for unspecified reasons. He also admitted SOR ¶1.c and he stated:

I admit to the details outline in subparagraph 1.c being correct. I showed poor judgment in my failure to cooperate and provide truthful and candid answers during the investigative process. I was not candid about my past out of a combination of embarrassment and lingering issues from my past with an anxiety disorder. Under 17.d of Directive 5220.6 I acknowledge that what I did was wrong and am to address the factors that caused me to fail in my responsibilities as a participant in the investigative process. (Item 1)

Applicant did not provide a response to the FORM or additional mitigating evidence. He did not provide what actions he was taking to address the factors that caused him to fail in his responsibilities as a participant in the investigative process as he stated in his SOR answer.

Policies

When evaluating an applicant's suitability for national security eligibility, 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 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(c), 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. Directive ¶ E3.1.15 states 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 as to obtaining 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 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

Guideline E: Personal Conduct

AG ¶ 15 expresses the security concern for 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 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. I find the following potentially applicable:

(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 involving in making a recommendation relevant to a national security eligibility determination, or other official government representative.

Applicant admitted that he deliberately omitted from his SCA that he had been fired from his employment. He also admitted that during his interview with a government investigator he deliberately falsified material facts by stating he left employment by mutual decision when he fact he was fired. AG ¶¶ 16(a) and 16(b) apply.

SOR 1.b alleged Applicant was fired from his job for unspecified reasons. There is insufficient evidence to conclude that the basis of firing was due to any specific personal misconduct or other questionable conduct. No disqualifying conditions apply. I find for Applicant regarding this allegation.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

(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; 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.

The evidence does not support the application of AG ¶ 17(a). There is insufficient evidence to conclude that Applicant made a prompt, good-faith effort to correct the falsification on his SCA. During his background interview with a government investigator, he provided false information, saying he left his employment by mutual agreement. He then provided a series of comments about his employment to the government investigator, and how others were let go and laid off. It was not until the government investigator asked him point blank if he was terminated did he then admit he was fired. He explained he was embarrassed. In his response to government interrogatories and his answer to the SOR, he provides other explanations concerning his supervisor and that he has an anxiety disorder. It is unknown if he is attributing that this disorder caused him to be untruthful.

Being truthful and honest is the cornerstone of the security clearance process. It is the simplest part of the process. The government relies on those who are trusted with the nation's secrets to always be honest, even when disclosure could potentially threaten one's career. National security always trumps one's personal considerations. Applicant deliberately chose to be untruthful. AG ¶ 17(c) does not apply because deliberately failing to disclose information on a SF 86 and swearing to its accuracy is not a minor offense. He had an opportunity to be truthful to the government investigator and again chose not to do so. Although, Applicant admitted in his SOR answer that he failed to be truthful, this alone is not enough to apply AG ¶ 17(d). I find Applicant's omissions are serious and cast doubt on his reliability, trustworthiness, and good judgment.

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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline E in my whole-person analysis. Applicant has not met his burden of persuasion. The record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant failed to mitigate the security concerns arising under Guideline E, personal conduct.

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
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge