



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



In the matter of:)	
)	
)	ISCR Case No. 23-02163
)	
Applicant for Security Clearance)	

Appearances

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

08/27/2024

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 30, 2024, the Department of Defense (DOD) issued to 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 February 20, 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 15, 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 2 through 4 (Item 1 is the SOR). Applicant did not submit a response to the FORM or object to the Government's documents. The case was assigned to me on August 5, 2024. The Government's documents are admitted into evidence.

Findings of Fact

Applicant admitted all of the 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 28 years old. He is a high school graduate and has earned some college credits but not a degree. He never married. He has a minor child. He has worked for a federal contractor since February 2023.

Applicant completed a security clearance application (SCA) in March 2023. Section 13A asked him to report his prior employment activity; the dates of the employment; name of the employer; and other information. He disclosed that from April 2021 to October 2022, he worked for AAP as a remote customer service agent. For each employment entry, it also asked "reason for leaving." Applicant wrote "Voluntarily resigned" from employment with AAP. (Item 3) It further asked:

For this employment have any of the following happened to you in the last seven (7) years?" 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. (Item 3)

Applicant responded "no" to the above inquiry. This section further inquired under the subsection: "Received Discipline or Warning" the following:

For this employment, in the last seven (7) years have you received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as a violation of security policy? (Item 3)

Applicant responded "no" to the above inquiry.

Applicant was interviewed by a government investigator in June 2023. Applicant confirmed to the government investigator that he voluntarily resigned from AAP; that he was not fired; did not quit a job after being told he was going to be fired; and he did not leave a job following allegations of misconduct or unsatisfactory performance. Applicant also confirmed to the government investigator that he had not received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace. Applicant was then confronted with information about his employment record with AAP which reported he had been fired for unfavorable employment. He had also received multiple corrective reports leading to his termination. Applicant admitted to the

government investigator that he intentionally provided the wrong information in his SCA because he was embarrassed. He said he falsely answered the government investigator's question because he misunderstood it. He admitted he was given multiple written warnings, counseled, and given a written reprimand while working at AAP for his performance. After his last written reprimand, he was counseled and warned that one more reprimand and he would be fired. Applicant again failed to comply with his employer's work requirements, and he was fired. He told the government investigator that going forward, he would think about things before doing them. (Item 4)

In Applicant's SOR answer he admitted he deliberately failed to accurately report his employment history because he was afraid "of what the results would [be] if it was known that I was terminated." He said he had no excuse and sincerely apologized for not explaining why he was terminated. He further stated that he had received a minimum of three written warnings from AAP between May 2022 and October 2022 for performance issues (SOR ¶ 1.a). He admitted he was fired from AAP in October 2022, as a result of multiple corrective action reports and is not eligible to be rehired (SOR ¶ 1.b). He admitted that he was terminated from AAP and did not leave by mutual agreement. He said the reason he falsified this information on his SCA was because he did not want the termination to prevent him from being granted eligibility for a security clearance (SOR ¶ 1.c). He further admitted that he deliberately falsified his SCA by reporting that in the past seven years he had not received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace. Again, his reason was because he did not want his warnings to prevent him from obtaining a security clearance (SOR ¶ 1.d).

Applicant also admitted in his SOR answer that when he was interviewed by a government investigator in June 2023, he provided false material facts during his subject interview when he stated he had voluntarily resigned from AAP when in fact he failed to disclose he had been fired. He said he was afraid his termination would prevent him from obtaining a security clearance (SOR ¶ 1.e). Applicant did not provide any additional evidence.

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

Applicant admitted and the evidence supports that he received at least three written warnings from AAP for performance issues; he was fired from AAP as a result of multiple corrective action reports and is not eligible to be rehired; and he deliberately failed to disclose he was fired and received multiple written warnings on his March 2023 SCA. He also admitted and the evidence supports that during his June 2023 personal subject interview he falsified material facts to a government investigator when he stated he had voluntarily resigned from AAP when in fact he had been fired. AG ¶¶ 16(a) and 16(b) apply.

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 his omissions. To the contrary when initially asked by the government investigator about his job with AAP, he confirmed he had voluntarily resigned, which was false.

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 SCA and swearing to its accuracy is not a minor offense. Deliberately providing false information to a government investigator is not a minor offense. I find Applicant's omissions and falsification are serious and cast doubt on his reliability, trustworthiness, and good judgment.

Applicant admitted he deliberately omitted reportable information on his SCA and provided a false statement to the government investigator. There is insufficient evidence as to factors that may have contributed to his conduct. There is insufficient evidence that future behavior is unlikely to recur. Because Applicant requested a determination on the record without a hearing, I had no opportunity to question him about his conduct or evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). AG ¶ 17(d) does not 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 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 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

Subparagraphs 1.a-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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge