



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



In the matter of:)
)
) ISCR Case No. 23-00660
)
Applicant for Security Clearance)

Appearances

For Government: Andrea M. Corrales, Esq., Department Counsel
For Applicant: *Pro se*

10/24/2024

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of the Case

Applicant submitted a security clearance application (SCA) on April 6, 2022. (Item 3.) On February 13, 2024, the Defense Counterintelligence and Security Agency Consolidated Adjudications Services (DCSA CAS) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline E. (Item 1.) The DCSA CAS acted 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) implemented by the DOD on August 8, 2017.

Applicant answered the SOR on March 5, 2024 (Answer), and requested a decision on the record without a hearing. Department Counsel submitted the Government’s written case on June 20, 2024, and a complete copy of the file of relevant material (FORM) was sent to Applicant, including documents identified as Items 1 through 5. The FORM amended the SOR by adding two additional allegations, 1.m. and 1.n. He was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government’s evidence. He responded to the FORM on July 30, 2024, noting no objections, however, Applicant neither admitted nor denied the two additional

allegations. His silence is viewed as a denial of the allegations. Items 1 through 5 are admitted into evidence. The case was assigned to me on September 16, 2024.

Findings of Fact¹

Applicant, age 51, is divorced and has no children. (Item 3 at pages 5 and 16~17.)

Guideline E - Personal Conduct

1.a.-1.f. Applicant admits the following: in 1991, he was charged with Assault and Battery, Dangerous Weapon Knife; in 1993, he was charged with Assault With Intent to Rob And Assault and Battery; in 1997, he was charged with Operating Vehicle Under Influence (DUI) of Liquor; also in 1997, he was charged with Operating Vehicle After a Suspended License; in February 1998, he was charged a second time with Operating Vehicle After a Suspended License; and also in 1998, he was charged with Possession . . . [of a] Controlled Substance, Marijuana.

1.g. Applicant does “not recall” in October 1999 being charged with being Disorderly. This allegation, however, is supported by state criminal court records. (Item 4 at page 2.)

1.h. Applicant admits in 2000, he was charged a second time with Possession . . . [of a] Controlled Substance, Marijuana.

1.i. Applicant does “not recall” in February 2001 being charged with Domestic Assault and Battery. This allegation, however, is supported by state criminal court records. (Item 4 at page 2.)

1.j. Applicant admits in 2012, he was charged with Possession of a Firearm without a License and without a Firearm ID Card.

1.m. The amended SOR alleges that in or around 1988 or 1989 Applicant was charged and convicted of, and placed on probation for, 30 counts of felony Grand Larceny. As noted above, Applicant neither admitted nor denied this allegation, which is viewed as a denial. As this allegation is only supported by the hearsay of subject’s interview, which is inadmissible in these proceedings without authentication, this allegation is found for Applicant.

1.n. The amended SOR alleges that in 2006 Applicant was charged and convicted of, and placed on probation for, Driving Under the Influence. As noted above, Applicant neither admitted nor denied this allegation, which is viewed as a denial. As this allegation is only supported by the hearsay of subject’s interview, which is inadmissible in these proceedings without authentication, this allegation is found for Applicant.

1.k. Applicant answered “No” to “Section 22 – Police Report (EVER) . . . Have you EVER been charged with an offense involving firearms or explosives? Have you EVER

been charged with an offense involving alcohol or drugs.” Applicant admits he was charged with a DUI in 1997, possession of Marijuana in 1998 and again in 2000, and with firearm violations in 2012.

1.I. Applicant admits, in a May 2022 subject interview, he failed to list his relatives and his employment history on his SCA.

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 (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s national security eligibility.

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 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 applicable guidelines in the context 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, “Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, and has the ultimate burden of persuasion as to obtaining 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of EO 10865, “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall

in no sense be a determination as to the loyalty of the applicant concerned.” See *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline E - Personal Conduct

The concern under this guideline 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. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

Based on Applicant's alleged deliberate falsification of his SCA, and his extensive criminal history, the following disqualifying conditions could apply:

AG ¶ 16 (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

AG ¶ 16 (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

AG ¶ 16 (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:

AG ¶ 16 (d)(3): a pattern of dishonesty or rule violation.

Applicant failed to disclose his past criminal conduct, his list of relatives, and his employment history on his SCA. He also has a demonstrated pattern of dishonesty and rule violation, evidenced by his numerous, past criminal charges.

The personal conduct security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

AG ¶ 17 (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

AG ¶ 17 (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; and

AG ¶ 17 (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.

After considering the mitigating conditions outlined above, none of them apply. Applicant has demonstrated a pattern of dishonesty or rule violation by his criminal acts stretching from 1991 to 2012. Furthermore, he did not make prompt or good-faith efforts to correct his falsification or concealment. He provided no information that indicates he was ill-advised in completing his SCA. Falsifying information is a serious offense and Applicant has not shown that similar lapses in judgment are unlikely to recur. Furthermore, he failed to take responsibility for his actions. He has not provided sufficient information in this record to demonstrate that he has met his burden of proof for his adverse personal conduct.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common-sense judgment based upon careful consideration of the applicable guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guideline E in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline E, and evaluating all the evidence in the context of the whole person, I conclude that Applicant deliberately falsified his SCA. This is coupled with a clear pattern of misconduct, from 1991 to 2012, covering a period of over twenty years. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline E (Personal Conduct): AGAINST APPLICANT

Subparagraphs 1.a~1.l: Against Applicant

Subparagraphs 1.m and 1.n: For Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Clearance is denied.

Richard A. Cefola
Administrative Judge