



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



In the matter of:)	
)	
)	ISCR Case No. 22-02319
)	
Applicant for Security Clearance)	

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: Sean Rogers, Esq.

12/05/2024

Decision

Curry, Marc E., Administrative Judge:

Applicant's pattern of dishonesty renders him an unacceptable candidate for a security clearance. Clearance is denied.

Statement of the Case

On May 15, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline E, personal conduct, explaining why it was unable to find it clearly consistent with the national security to grant security clearance eligibility. The DCSA CAS took the action 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 National Adjudicative Guidelines (AG) effective for any adjudication made on or after June 8, 2017.

On September 3, 2023, Applicant answered the SOR, denying all the allegations except subparagraph 1.g, and requested a hearing, whereupon the case was assigned to me on April 2, 2024. On April 12, 2024, the Defense Office of Hearings and Appeals issued

a notice of hearing, scheduling the hearing for May 14, 2024. The hearing was held as scheduled. At the hearing, I received nine Government exhibits (GE 1 – GE 9), 18 exhibits of Applicant (Applicant's Exhibit (AE) A through AE R), and the testimony of Applicant and four character witnesses. The hearing took two days to complete. Part two of the hearing was conducted on May 21, 2024. The transcript (Tr. I) of the first day's hearing was received on May 22, 2024. The Tr. of part two of the hearing was received on May 29, 2024. (Tr. II)

Findings of Fact

Applicant is a 43-year-old single man with one child, age 16. (GE 3 at 34) He was born in Haiti and immigrated to the United States at age 12. After graduating from high school, he joined the U.S. Air Force where he served from 2001 to 2005. Upon his separation, he received a general discharge under honorable conditions. (GE F) Applicant earned a bachelor's degree in 2005 and a master's degree in information technology in 2008. (GE 3 at 29) He was first granted a security clearance in 2004. (AE K; GE I at 41)

Applicant has worked for various defense contractors in the field of systems administration. (AE G) He has been working for his current employer since July 2021. (GE I at 17) He is highly respected on the job. His current supervisor characterizes him as a "highly valued member of [the] team," whose programs are "well run, healthy, on time, and on budget." (AE L) According to a previous supervisor, who began working with him in June 2021, he "always demonstrated outstanding character, integrity, and professionalism." (AE K) And a coworker characterizes him as a detail-oriented, organized individual who is "always willing to assist others as a mentor, answer questions, and take the time to develop less-experienced staff members when possible." (AE P) Per a government client, Applicant "demonstrated extensive knowledge of project management techniques and superb communication skills." (GE 3 at 39) According to a former supervisor who worked with him primarily between 2007 and 2012, he was a good worker, and a reliable and trustworthy individual. (Tr. II at 124) A previous coworker who worked with him between 2011 and 2012 characterized him as a standup guy with a "thirst for knowledge." (Tr. II at 131)

In July 2008, while in the military, Applicant was disciplined for unauthorized creation and cloning of an email account. (Tr. I at 67) Specifically, Applicant, as an information technology troubleshooter, was tasked with fixing an email network that was down. (Tr. I at 67) Once he fixed it, he tested it by cloning email accounts of others and sending messages. (Tr. I at 67) When he cloned the account of a lieutenant, it "gave the perception that [he] was an officer." (Tr. I at 67) Consequently, he received non-judicial punishment of reduction in rank from E-4 to E-1, and was administratively separated with a general discharge under honorable conditions, as noted above. (Tr. I at 69)

Applicant worked for Company 1, a defense contractor that serves the U.S. military in locations worldwide, from November 2019 to April 2021. (Tr. I at 54) In September 2019, he was reassigned from a project in central Europe, where he had been living, to a project in a Middle Eastern country. (Tr. I at 110) Because of the pandemic and a travel ban imposed by the Middle Eastern country, the project was postponed. His employer then

placed Applicant on unpaid leave, pending the lifting of the travel ban, and sent him home to the United States to complete a medical screening and to take other administrative steps to prepare for the eventual transfer to the Middle Eastern country. (Tr. I at 76, 144)

Applicant went to the United States, as instructed. On October 9, 2020, Applicant's employer contacted him and told him to report for work on October 13, 2020, for one of their clients in the state where Applicant was then located. (Tr. 74; GE 5 at 13) On October 12, 2024, Applicant informed his employer that his father, a Haitian resident, had been hospitalized and that his condition was deteriorating rapidly. (GE 5 at 11) In addition, he told his employer that he would be taking the week off "to join him and assist the family." (GE 5 at 11) Applicant did not travel to Haiti, as he told his employer. Instead, on October 14, 2020, he traveled to an African country for a vacation, and stayed through October 28, 2020. (GE 4 at 33; Tr. I at 134)) Applicant never submitted a foreign travel report to Company 1 for his trip to the African country, as required. (GE 9 at 1) Applicant had originally planned to travel to Haiti but did not go because of its excessive civil unrest at the time. (GE 4 at 80)

On October 17, 2020, Applicant's father passed away. (GE 5 at 9) That day, Applicant emailed his employer requesting extended leave though November 12, 2020, because he needed to assist his family with the funeral arrangements and emotionally support his mother. (GE 5 at 9).

In response to Applicant's October 17, 2020 email, his employer extended his leave to November 12, 2020. (GE 5 at 6) In a return email on October 23, 2020, Applicant thanked his employer for their understanding, stating that his "father had been the rock in [his] family throughout the years and [would] truly be missed." (GE 5 at 5) Further, he expressed his appreciation for his employer allowing him the extra time to spend with his mother, explaining that he could "not fathom leaving [her] all alone at this time." (GE 5 at 5) When Applicant wrote this email, he was in Africa, and his mother was not with him. (GE 5 at 9) Moreover, contrary to the email, neither Applicant nor his mother had a relationship with his father because he abandoned the family when Applicant was between three and five years old. (Tr. 1 at 90) Applicant never saw him growing up, did not know his whereabouts, and was raised by a gentleman with a stepfather-type relationship with him. (GE 5 at 6; Tr. 45) In addition, he did not know his father was alive until his mother told him in October 2020. (GE 4 at 80)

In November 2020, Applicant took a job with another defense contractor. (Company 2; GE 4 at 32) When Applicant took the second position, he was on leave of absence without pay from Company 1 and waiting for the restriction to be lifted on traveling to the Middle Eastern country where his next assignment was scheduled. (Answer at 3) Applicant did not tell Company 1 that he took another job. He did not consider working for Company 2 to be a problem because he was working for a different agency with Company 2, and he was on unpaid leave from Company 1, waiting to be transferred to a job in a Middle Eastern country. (GE 3 at 29; GE 4 at 31) His intention was to quit working for Company 2 as soon as he was cleared to travel to the Middle Eastern location where Company 1 had assigned him. (GE 3 at 14) Ultimately, Applicant resigned from Company 1 in April 2021 after they

placed him on administrative leave pending an internal investigation into his activities. (GE 3 at 30; GE 7 at 1)

Applicant's current supervisor testified. When asked during cross-examination whether he would have a problem with one of his employees simultaneously working for another employer, he answered "no," explaining that although companies in his industry want employers with a "24/7/365" mentality," in a situation such as Applicant when the employee is in between assignments and not working, it is "almost preferable," that they obtain a position with another company because it is more cost beneficial for the employee to work elsewhere while between assignments than to be on the company payroll while not working, and just waiting for a call from the next contractor. (Tr. II at 165)

Applicant's position with Company 2 was in a Western European country. (GE 4 at 32) In November 2020, he requested leave through January 2021 to travel to the United States for the birth of his child. (Tr. I at 42; GE 8 at 2) Applicant was approved leave; however, he did not visit his girlfriend and the baby. Instead, he went on vacation without informing Company 2. The SOR alleges that Applicant provided misleading or false information to Company 2's timekeeper regarding the explanation for taking leave. Applicant denies this allegation, asserting that when he applied for leave, he intended to visit his girlfriend and be present at or around the time of the baby's birth. (Tr. I at 119) However, the birth occurred before the scheduled leave, and a man whom his girlfriend was romantically involved, unbeknownst to Applicant, while he was overseas, took a DNA test, which confirmed that he, not Applicant, was the baby's father. By then, Applicant's leave had been approved. He did not tell his employer what happened because he was embarrassed. (Tr. I at 17)

In December 2020, Applicant's sister in the United States contacted him to tell him that their mother and his stepfather had been in a serious car accident, and that his stepfather passed away, while their mother was in the hospital's intensive care unit. (ICU) Applicant was working for Company 2 in Western Europe at the time. (Tr. I at 124) Subsequently, Applicant informed his supervisor and took leave to travel home to the United States.

When Applicant arrived home, he discovered that his mother was in the ICU, as his sister had informed him, but that she was mistaken as to the identity of the passenger in the car who had passed away. Specifically, Applicant's stepfather was not in the car. Instead, it was a friend of his mother. (Tr. 124) Applicant never corrected this information with his supervisor. Instead, he emailed the supervisor and told him that he was in the process of coordinating his stepfather's funeral. (Tr. 124)

When Applicant was in the United States visiting his mother, Company 1 offered him a position in a city near his hometown where his mother was recuperating from the car accident. In January 2021, he took this job and resigned from Company 2. (Tr. II at 47; GE 4 at 32) He took this position because it afforded him the opportunity to work near the city where his mother was recuperating. (Answer at 6)

After submitting his resignation, Applicant began completing his out-processing paperwork. (Tr. 48) The out processing was delayed because his common access card (CAC), together with his automobile and most of his personal belongings were at his residence in the Western European country where he had been living while working for Company 2. (Tr. II at 48) He made plans to ship his automobile to his new home, and informed his employer when he would return to his previous residence in Western Europe to pick up the remainder of his belongings. (Tr. II at 49) His employer expressed no objections. (Tr. II at 49)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall 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 deciding.

The protection of the national security is the paramount consideration. AG ¶ 1(d) 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. 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

- (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.

Analysis

Guideline E: Personal Conduct

Under this concern, “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.” (AG ¶ 15) Applicant has a history of not being candid with his employers, and at times, lying to his employers about relevant information when applying for leave. In tandem with his discipline while in the Air Force for unauthorized cloning of an email account, the following disqualifying condition is potentially applicable:

AG ¶ 16 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 regulation, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information [including]

- (d)(3) a pattern of dishonesty or rule violations.

When Applicant took a job with Company 2 in November 2020, he was on unpaid leave from Company 1. Moreover, his work for Company 2 involved a different agency than the agency he worked for through Company 1. Under these circumstances, there was no conflict of interest. I resolve subparagraph 1.a in Applicant’s favor.

Applicant resigned from Company 2 in February 2021 after being offered a position with Company 1 near the city where his mother was recovering from a major car accident. Applicant’s expressed desire to work in an area close to his mother rather than overseas during her health crisis was credible. Consequently, I resolve subparagraph 1.e in his favor.

Applicant’s out-processing from Company 2 after resigning was delayed. However, the departure paperwork was delayed because he had left his CAC card in his car in Western Europe where he had lived while working for Company 2. Given that he ultimately completed the out-processing steps, and that there is no record that his ex-employer raised any concerns about this, I conclude that there are no security concerns with respect to the out-processing process. I resolve subparagraph 1.f in Applicant’s favor.

When Applicant applied for leave from Company 2 in November 2020 to go home the following month to be present for the birth of his girlfriend's child, he sincerely thought it was his baby. He did not know that another man was the father until after he had applied for leave. Consequently, he was not being dishonest when he completed the leave application. I conclude subparagraph 1.d generates no security concern.

Conversely, the lie Applicant told Company 1 about his father, as set forth in subparagraph 1.b, triggers the unmitigated application of AG ¶ 16(d)(3). At first glance, Applicant's dishonest explanation for needing to take leave after his father's decline and subsequent death, as alleged in subparagraph 1.b, appears immaterial. Specifically, Applicant had already been granted leave to attend to matters related to his father's illness and subsequent death before he mischaracterized their relationship. However, the scope of Applicant's dishonesty involved an entire false narrative that he concocted about his relationship with his father. Moreover, the nature and seriousness of Applicant's dishonesty was compounded after his employer granted him additional leave to spend with his mother, and he, instead, went by himself on a vacation to a foreign country, which he failed to report, as required by company policy. The nature and seriousness of Applicant's dishonesty was further compounded when he emailed his employer from the foreign country thanking the employer for extending his leave to spend time with his mother, explaining how he could not fathom leaving his mother alone during her time of grief.

Applicant lied to Company 2 in a similar fashion after his mother was seriously injured in a car accident. Specifically, he told his employer that his stepfather died in the accident. Not only did he fail to inform his employer that his stepfather was not in the car once he found out that it was someone else; he perpetuated the falsehood that his stepfather died in the accident by emailing his employer that he was planning his funeral.

Applicant's pattern of rule violations and dishonesty render him an unacceptable candidate for a security clearance. I conclude AG ¶ 16(d)(3) applies without mitigation.

Whole-Person Concept

Per the testimony of coworkers, Applicant is an exceptional performer. However, this job performance is outweighed by his history of dishonesty with his employers. I conclude Applicant failed to mitigate the 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:	For Applicant
Subparagraph 1.b:	Against Applicant

Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraphs 1.e – 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant

Conclusion

Considering 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.

Marc E. Curry
Administrative Judge