



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



In the matter of:)	
)	
-----)	ISCR Case No. 04-04579
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: David P. Price, Esquire

March 7, 2008

Decision

LYNCH, Noreen A., Administrative Judge:

On October 23, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline E for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on November 17, 2007. He answered the SOR in writing through counsel on November 26, 2007, and requested a hearing before an Administrative Judge. DOHA received the request on December 27, 2007. I received the case assignment on January 4, 2008. I granted Applicant's request for a delay until February 2008, in order for his counsel to be available. DOHA issued a notice of hearing on January 17, 2008, and I convened the hearing as scheduled on February 13, 2008. The government offered Exhibits (Ex.) 1 through 6 which were

received without objection. Applicant testified on his own behalf and submitted Exhibits A through E, without objection. DOHA received the transcript of the hearing (Tr.) on February 22, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his Answer to the SOR, dated November 17, 2007, Applicant admitted the factual allegations in ¶¶ 1.a and 2.a of the SOR, with explanations. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is a 50-year-old employee of a defense contractor. After graduating from high school in 1975, he attended college on scholarships for several years. He joined the U.S. Navy in 1978 and retired as a chief warrant officer in 2000. During his military service he held a security clearance.¹

While in the Navy, he received numerous awards, medals, commendations, and certificates. He was a superb seaman and mechanic. He earned the respect of junior and senior leadership. He was highly recommended for any position of leadership.²

Applicant married his first wife in January 1981³ and believed he was divorced on August 13, 1992. The hearing for the divorce was July 30, 1992.⁴ However, the divorce decree was not actually signed until September 9, 1992. This created many problems for Applicant.⁵

On August 24, 1992,⁶ Applicant married a second time. He called his divorce attorney to see if the divorce was final. Applicant asserts that he was told “yes” that he was divorced. However, unbeknownst to him, he was not officially divorced from his first wife.⁷ Applicant had a difficult and tumultuous second marriage. His second wife filed for divorce in 1999. At that time, Applicant was preparing to retire from the Navy. In fact, he retired in 2000.

¹Tr. 45.

²AE C (Awards and Certificates 1-21).

³There are different months and years in several documents for this marriage. At the hearing, Applicant stated January 22, 1981.

⁴AE B

⁵AE B (Final Decree of Divorce).

⁶One document states August 30 not August 24.

⁷Tr. 75.

Applicant was preparing to marry his third wife. He married her on September 18, 1999. During this time, Applicant had to process many retirement papers, including information on dependents and beneficiaries. He needed to produce divorce decrees, and other documents. It was during this time that he learned that the second marriage was not valid (void ab initio) because he married before he was actually divorced from his first wife. His attorney then told him he needed to get a decree of annulment or have the second marriage declared void. The Navy required this documentation to proceed with the retirement process. Applicant decided after a time to forge a signature on the annulment paperwork. He signed the name of the state judge and then submitted the paper to the Navy - the date on that decree was September 10, 1999.

Applicant's second wife was not happy with the annulment. She initiated a civil suit against Applicant. She learned that she would have no dependent benefits and alerted the Navy. The Naval Criminal Investigative Service (NCIS) investigated Applicant for possible fraud, forgery, bigamy and orders violations charges.⁸ Applicant received no punishment from the Navy and retired on February 1, 2000.

In February 2001, Applicant completed a security clearance application. During the investigation, Applicant learned that the FBI report indicated that he had an arrest for forgery in January 2000.⁹ He did not take the job with the agency because he was offered another position with a government contractor.

In 2003, Applicant completed another security clearance application. He commented on the form about the incident in January 2000.¹⁰ Applicant started his current employment in February 2000 and has a security clearance. He has completed several important projects for the company.

Applicant's current position is a challenging and demanding one. His colleagues and supervisors applaud him for his leadership and his integrity. He is open, honest, and loves his job. He receives high praise from his current employer.

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

⁸Tr. 104.

⁹TR. 109.

¹⁰GE 2 (Security Application 2003).

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 over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2©, 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 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. 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 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 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 information.

Section 7 of Executive Order 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 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 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; including:

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the persons' professional, or community standing.

The Government established security concerns over Applicant's misconduct in December 1999. He submitted an annulment decree to the Navy with a forged signature of a state judge. His submission of a false document is a violation of the Uniform Military Justice Code (UCMJ). He admitted that he signed the name of a judicial official on the annulment decree so that he could complete the required paperwork for the retirement process. Thus, I find his action alleged in SOR ¶1 establishes ¶16(b) and 16(e).

Paragraph 17 lists seven conditions that could mitigate security concerns:

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

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(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;

(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 caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Applicant has admitted the conduct alleged in SOR ¶ 1. The offense is not minor. He signed the name of a state judge on an official document and submitted it to the Navy. The offense has not recurred, and Applicant now recognizes the security and employment impact of such conduct. It does not cast doubt on his current reliability, trustworthiness, or good judgment because it is unlikely to recur. Applicant has "acknowledged the behavior" and recognized the negative consequences of such conduct. Based primarily on the lack of misconduct after 1999, I conclude he has matured and such behavior is unlikely to recur. Finally, he has reduced or eliminated "vulnerability to exploitation, manipulation, or duress" by not He expressed remorse for this misconduct and presented character evidence to establish that this misconduct was out of character. Thus, ¶ 17(c) is applicable. ¶ 17(d) and 17(e) are partially applicable.

Guideline J, Criminal Conduct

AG ¶ 30 expresses the security concern pertaining to criminal conduct:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

Paragraphs 31(a) and 31(c) set forth two conditions that could raise a security concern and may be disqualifying, "a single serious crime or multiple lesser offenses," and "allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted."

The offense, as listed in SOR 2.a (submission of a false document constitutes a violation of the UCMJ. The fact that Applicant was not disciplined nor were charges or conviction resulted is not dispositive under paragraph 31(c), which notes a possible security concern without formal prosecution of the offense. I therefore conclude that paragraph 31(a) applies to SOR ¶ 2.a.

AG ¶ 32 provides four conditions that could potentially mitigate security concerns:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur

and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(c) evidence that the person did not commit the offense; and

(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

AG ¶¶ 32 (a) and (d) apply. There is evidence of successful rehabilitation, including the passage of about nine years. He expressed remorse. He has an outstanding employment record, military service and a great recommendation from his current employer. Applicant has had a security clearance for almost 30 years. His post-offense behavior is sufficient to fully mitigate the act of misconduct in this case.

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(a): "(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) 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.

The Government established security concerns over Applicant's military personal misconduct in December 1999. He submitted an annulment decree to the Navy with a forged signature of a state judge. His submission of a false document is a violation of the UCMJ. He admitted that he signed the name of a judicial official on the annulment decree so that he could complete the required paperwork for the retirement process. Thus, I find his action alleged in SOR ¶ 16(b) and 16(e).

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant served more than 20 years in the U.S. Navy garnering many awards and citations. He has an outstanding employment record and maintained a security clearance for many years. He is praised

for his trustworthiness and leadership skills. He is now working overseas for a defense contractor and received high praise for his work. He has many character references from retired military personnel.

Applicant regrets submitting a false document. He has no other misconduct or offense since that time. He has been recommended for a security clearance by those knowledgeable in the field.

Based on Applicant's credible testimony and review of him as a whole person, I find in his favor. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his personal conduct and criminal 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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

NOREEN A. LYNCH
Administrative Judge