



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



In the matter of:)
)
 [NAME REDACTED]) ISCR Case No. 12-04364
)
 Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Esquire, Department Counsel
For Applicant: *Pro se*

03/07/2014

Decision

MALONE, Matthew E., Administrative Judge:

Applicant failed to mitigate security concerns raised by his intentional false official statements to the Government. Clearance is denied.

Statement of the Case

On November 17, 2011, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain a security clearance required for his work as a defense contractor. The results of the ensuing background investigation, which included Applicant's responses to interrogatories¹ from Department of Defense (DOD) adjudicators, did not support a determination that it is clearly consistent with the national

¹ Authorized by DoD Directive 5220.6 (Directive), Section E3.1.2.2.

interest to grant Applicant's request for access to classified information.² On September 10, 2013, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the adjudicative guidelines³ regarding personal conduct (Guideline E).

Applicant timely responded to the SOR (Answer) and requested a hearing. The case was assigned to me on December 19, 2013, and I convened a hearing on January 22, 2014. Department Counsel presented Government Exhibits (Gx.) 1 - 3, which were admitted without objection.⁴ Applicant testified and submitted one document, which was admitted without objection as Applicant's Exhibit (Ax.) A. I left the record open after the hearing to allow Applicant time for post-hearing submissions. The record closed on February 3, 2014, when I received three documents, which collectively have been admitted without objection as Ax. B. DOHA received the transcript of hearing (Tr.) on February 6, 2014.

Findings of Fact

Under Guideline E, the Government alleged that in May 1988,⁵ Applicant was arrested and charged with driving while intoxicated (DWI) (SOR 1.a); that in July 1996, Applicant was arrested and charged with driving under the influence (DUI), to which he pled guilty, was placed on probation for 12 months, ordered to complete community service, and assessed fines and court costs (SOR 1.b). Applicant admitted these allegations.

It was also alleged in the SOR that Applicant deliberately omitted from his EQIP the 1988 DWI charge (SOR 1.e); that in a February 12, 2012 subject interview during his background investigation, he deliberately withheld from a Government investigator information about both of his alcohol-related arrests (SOR 1.c); and that during a March 9, 2012, subject interview, he deliberately withheld from a Government investigator information about his 1988 DWI arrest (SOR 1.d). Applicant denied, with explanations, the SOR 1.c and 1.d allegations. He admitted, with explanation, the SOR 1.e allegation. (Answer) In addition to his admissions, I make the following findings of fact.

Applicant is 52 years old. He and his wife have been married since April 1990. Applicant has worked for his current employer since June 2011. He was recently offered a promotion and a raise in pay, conditioned on obtaining a security clearance. Applicant

² Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

³ The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006).

⁴ An index of the Government's exhibits also included in the record as Hearing Exhibit (Hx.) 1.

⁵ The SOR originally alleged this offense to have occurred in 1998. Applicant denied the allegation on this basis. However, it was determined that this was a typographical error. The correct year was 1988, the allegation was corrected at hearing, and Applicant admitted the allegation as amended. (Tr. 13 - 14)

is an electronics technician working supporting a military installation, where he has worked for at least two previous defense contractors since 1991. He was not required to have a security clearance until 2011. His 2011 EQIP constitutes his first request for a clearance. Applicant's references reflect an excellent workplace reputation for dedication, expertise, and reliability. (Gx. 1; Ax. A; Ax. B; Tr. 7 - 9)

In May 1988, Applicant was arrested and charged with driving while intoxicated (DWI), to which he later pleaded guilty. His arrest was made after he was stopped by a police officer who saw Applicant run into a curb while driving down the street. Applicant was handcuffed and taken to jail, where he spent the night. In July 1996, Applicant was arrested and charged with driving under the influence (DUI). He was pulled over when a police officer saw him swerve in front of the officer's patrol car. Applicant was handcuffed and taken to jail, where he spent the night. (Gx. 2; Gx. 3; Tr. 35 - 41)

When Applicant completed his EQIP, he answered "No" to the following question:

Section 22 - Police Record (EVER). Have you **EVER** been charged with an offense involving alcohol or drugs? (Capitalization and bold print in original.)

His answer omitted both of his arrests for drunk driving. Applicant has claimed, in his SOR Answer, in his response to DOD interrogatories, and at various times in his hearing testimony, that he did not try to mislead the Government by his negative response. Rather, he claimed he was filling out other company documents at the same time as his EQIP. The company documents, he said, only required information from the preceding ten years. He thought the same limitations applied to the EQIP. (Answer; Gx. 2; Tr. 41 - 42, 44 - 46, 50 - 51, 55, 61 - 62)

On February 16, 2012, Applicant was interviewed by a Government investigator. During that interview, Applicant was asked about the 1996 DUI charge. Applicant denied it and said he was only cited for a traffic violation and was never detained or jailed. After the interview, Applicant sent an email to the investigator, in which he admitted he had lied about the 1996 arrest, and he provided some details about the event. He stated in the email that he did not tell the truth because he was embarrassed about his conduct, which occurred during a time in his life he wanted to forget. (Gx. 2)

On March 9, 2012, Applicant was re-interviewed by the same investigator. Applicant confirmed many of the details the investigator had learned from arrest and court records obtained after the first interview. During the interview, Applicant was also asked about the 1988 DWI arrest. Applicant denied the arrest had occurred. He did not make any claims of identity theft, and he did not provide any other explanation for that entry in his arrest record. (Gx. 2)

At his hearing, Applicant denied that the investigator had asked him about the 1988 DUI arrest. However, in his response to interrogatories, Applicant admitted he was arrested in 1988, but repeated his assertion that he thought he only had to disclose

events within the last ten years. Applicant also stated in his response to interrogatories that he feared he would not get his security clearance if he disclosed both of his drunk driving arrests. (Gx. 2; Tr. 51 - 53, 63 - 67)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁶ and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the “whole-person” concept, those factors are:

- (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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁷ for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.⁸

A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government

⁶ See Directive. 6.3.

⁷ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁸ See *Egan*, 484 U.S. at 528, 531.

has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government.⁹

Analysis

Personal Conduct

The Government’s information, along with Applicant’s admissions and testimony, is sufficient to raise a reasonable security concern about Applicant’s suitability for access to classified information. That security concern is articulated in the guideline for Personal Conduct at AG ¶ 15, as follows:

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.

Applicant’s two alcohol-related arrests are documented in Gx. 2 and 3. Without more, both events would have little security significance. They occurred between 18 and 26 years ago, and there is no current indication of criminal conduct or alcohol abuse. However, Applicant has repeatedly and deliberately lied about those events. He did so out of fear he would lose his security clearance. Available information requires application of the following AG ¶16 disqualifying conditions:

- (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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and
- (b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

⁹ See *Egan*; AG ¶ 2(b).

In response to the Government's information, it was Applicant's obligation to provide information sufficient to mitigate these security concerns. Available to Applicant were the following pertinent 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;
- (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; and
- (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 Applicant's first interview, he contacted the Government investigator and tried to correct his earlier falsification. This benefits Applicant, and could support application of AG ¶ 17(a). However, in his second interview, he again made a statement he knew to be false when he denied his 1988 arrest. He further compounded that false statement when, at his hearing, he denied that the investigator had even asked him about the 1988 arrest during his second interview. Later in the hearing, he admitted this, too, was a false statement. AG ¶ 17(a) does not apply.

Applicant did not claim that he was advised by competent authority to withhold information about his arrests. Instead, he repeatedly claimed that he misunderstood the question, in that, he thought there was a ten-year limit on how far back he needed to report in his background. Were this really the case, his intent to falsify might reasonably be in question. But he not only made several false denials about his arrests, he concocted a story about the details of his 1996 arrest when he was first interviewed. AG ¶ 17(b) does not apply.

AG ¶ 17(c) does not apply because nothing about Applicant's falsifications can be considered minor or remote in time. His first inclination, when asked to disclose adverse information about himself, has been to lie. Even if Applicant did not intend to withhold information from his EQIP, he repeatedly tried to mislead the Government during his interviews and during his hearing. By making false statements to protect his own interests, Applicant has acted in a manner that is fundamentally at odds with the Government's compelling interest in being able to accurately assess his suitability for a clearance. He has not mitigated the security concerns about his personal conduct.

Whole-Person Concept

I have evaluated the facts and have applied the appropriate adjudicative factors under Guideline E. I also have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is a 52-year-old defense contractor who has worked at the same military facility for over 20 years. He has been married to the same, supportive spouse the entire time. Applicant has a solid reputation at work and is viewed by his colleagues as dedicated and reliable. All of this portrays stability and maturity. Unfortunately, Applicant's conduct is fundamentally unacceptable when it comes to deciding if he can be trusted to act in the Government's best interest, even if doing so may undermine his own position. It is perfectly understandable that Applicant may not have understood the EQIP questions to which he had to respond. Mistake or misunderstanding is often a good defense to allegations of intentional falsification. However, the record as a whole shows that Applicant understood what the Government was asking during two interviews, a set of interrogatories, and at his hearing. He has failed to address the doubts about his trustworthiness raised by his false answers to those questions. Because protection of the national interest is the principal goal of these adjudications, those doubts must be resolved against the Applicant.

Formal Findings

Formal findings 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 foregoing, it is not clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

MATTHEW E. MALONE
Administrative Judge