



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 12-04434

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: *Pro se*

07/23/2015

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant did not mitigate security concerns regarding his personal conduct. Eligibility for access to classified information is denied.

History of the Case

On October 3, 2014, the Department of Defense (DOD) Consolidated Adjudicative Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DOD adjudicators could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order 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 (AGs) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on October 8, 2014, and elected to have his case decided on the basis of the written record. Applicant received the Government's File of Relevant Material (FORM) on May 26, 2015, and responded to the FORM on June 10, 2015 with an attached magistrate's report covering Applicant's complaint for absolute divorce from the spouse he married in 1994. (Item 17) The case was assigned to me on June 17, 2015.

Summary of Pleadings

Under Guideline E, Applicant allegedly (a) engaged in multiple overlapping marriages between 1990 and 2014; (b) falsified his security clearance applications of January 1992, February 2000, January 2005, March 2009, September 2009, and December 2011, by deliberately failing to disclose his six months of military service in the Marine Corps in 1984; (c) falsified his security clearance applications of March 2009, September 2009, and December 2011 by failing to disclose his employment service with a company that he separated from in January 2005 under unfavorable circumstances; (d) falsified his security clearance application of December 2011 by failing to disclose his former spouses and sponsorship of foreign nationals; and (f) falsified material facts during official interviews in 2006, 2012, and 2014, by failing to disclose his overlapping spouses in his 2006 interview and employment termination in 2005 for cause in his ensuing 2012 and 2014 interviews. Additionally, Applicant allegedly knowingly violated an employer's code of conduct in November 2011 by selling handicap placards to coworkers, and in January 2005 was terminated from a former employer for falsifying his security check forms.

In his response to the SOR (Item 4), Applicant admitted some of the allegations, denied others, and provided clarifications to some of his answers furnished in the security clearance applications he completed and answers he provided in DOD interviews conducted in 2006, 2012 and 2014. Applicant provided attachments to his response covering the status of his marriages and his dates of active military service. (Item 3)

Findings of Fact

Applicant is a 55-year-old security officer of a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant are adopted as relevant and material findings. Additional findings follow.

Background

Applicant has been married numerous times since 1990. (Items 4-6) In his latest e-QIP of December 2011, he listed only his current wife, who he married in August 2004. (Item 5) Based on information Applicant provided in a 2012 interview with an agent of the Office of Personnel Management (OPM), and in his own response, corroborated by court records, he has been married numerous times, with several of his marriages overlapping with still active marriages.

Records support drawn inferences that Applicant married wife number one (wife 1) in August 1990, separated from her in May 1993, and achieved reinstatement of his divorce petition in June 1993. (Item 4) Applicant provided documentation of a final divorce from wife 1 in June 2003. (Items 4 and 6)

In 1992, Applicant married wife number two (wife 2) and sponsored her for a green card. (Items 4 and 6) His marriage to wife 2 overlapped with his marriage to wife 1, and he divorced wife 2 in December 1992, still legally married to wife 1. (Item 4)

While still married to wife 1, Applicant married wife number three (wife 3) in 1994 and sponsored her for a green card. (Items 4 and 6) He petitioned for divorce against wife 3 in 1996 and 1997, and was twice-denied in his petitions. (Items 4 and 6) Without documented divorce, his marriage to wife 3 remains in effect. His pending petition for divorce from wife 3 is currently pending in a circuit court within his state of residence. (Item 17)

Applicant married wife number 4 (wife 4) in April 2004, while still married to wife 1. (AEs 4 and 6) He sponsored her children in 2005 to come to the United States to live with him and wife 4, who already had a green card. (Items 4 and 6) Applicant remained married to wife 4 for over three years and petitioned for divorce in April 2007. (Item 4) In his petition, he confirmed that he had been separated from wife 4 since January 2006, and his petition for divorce from wife 4 was granted in July 2007 by a local court (Item 4), and in July 2009 by a court of the jurisdiction within his home state of residence. (Item 10) In October 2004, while still legally married to wife 3 and wife 4, Applicant married wife number five (wife 5). Applicant remains married to wife 5, and his marriage continues to overlap with his not concluded marriage to wife 3. (Items 4, 6, and 17)

Applicant claimed no post-high school college education credits in his security clearance applications. Nor did he claim any technical school credits. (Items 5 and 11-16)

Applicant's employment history

Applicant has held security officer positions with various employers for the past 15 years. Since November 2011, he has been employed by Company A as a security officer. (Item 5) Between February 2009 and November 2011, he was employed by Company B as a special police officer. (Item 5) He resigned his position after being placed on unpaid administrative leave for allowing a co-worker to use his handicap placard to park for free in a handicap space. (Item 5)

Before joining Company B, Applicant was employed by other defense contractors. Between April 2008 and February 2009, he was employed by Company C as a special police officer. He resigned his position in February 2009 to accept employment with Company B. (Item 5) Applicant worked as a special police officer for Company D between July 2007 and April 2008. (Item 5) Between November 2005 and July 2007, he was employed by Company E as a special police officer and left the employ of this company for a better job with Company D. (Items 5-7) With Company F,

he worked as a special police officer between September 2004 and May 2005 before resigning his position in May 2005 after being placed on suspension for the assigned reason of abandoning his post. (Items 15 and 6)

While employed by Company F, Applicant worked part-time for Company G. Records document that Applicant worked as a special police officer for Company G between November 2004 and January 2005. (Items 6 and 7) He was terminated by Company G when his company's DOD contract ended based on accepted reports that he signed off for responsibility for an area during a second shift that he did not actually work. (Items 6 and 7)

Applicant's military service

Throughout the security clearance application process, Applicant provided different inclusive dates for his military service. (Items 5-7 and 11-16) Based on the information he provided in April 2014 to an OPM agent, and corroborated by information provided by the Department of Veterans Affairs (DOV) in September 2002, Applicant entered military service in December 1981 and was released from active duty in January 1982. (Items 3 and 6) When he could not complete basic training requirements, he was separated from his Marine enlistment and granted an honorable discharge. (Items 3 and 6)

Applicant's e-QIP omissions

Between January 1992 and December 2011, Applicant completed a series of security clearance applications, in which he omitted or misstated material information about his marriages, employment suspensions and terminations, and military service. In a December 2011 electronic questionnaires for investigation processing (e-QIP), he omitted his prior military service completely, as well as his sponsorship of the children of spouse number four for permanent residence in the United States, and his employment suspensions and separations under adverse circumstances. (Items 5-7)

In other e-QIPS he completed, Applicant made similar omissions and misstatements. In the e-QIP he completed in January 1992, he omitted his military service, answering "no" to question 13 that inquired about his military service.(Item 11) In the e-QIPs he completed in February 2000, he misstated the year he served in the Marine Corps, claiming military service in the Marine Corps between 1979 and 1984. (Item 12) Applicant misstated the inclusive dates of his military service as well in the employment application he completed in February 2000. In this application he claimed he served in the Marine Corps for approximately six months in 1984. (Item 13)

In addition to omitting and misstating the dates of his military service in the e-QIPs he completed in 2000, Applicant either omitted or failed to accurately disclose his prior employment suspensions and terminations in other security clearance applications. For instance, in the e-QIP he completed in March 2009, he failed to disclose his part-time employment with Company G and ultimate resignation from Company F under unfavorable circumstances. (Items 15 and 6)

Between February 2006 and April 2014, Applicant was interviewed on several occasions by agents of the OPM. (Items 6 and 7) In his 2006 interview, he misstated the circumstances of his separations from certain employment relationships and did not accurately explain the disciplinary actions taken by several of his employers and separations under unfavorable circumstances before being confronted by the interviewing agents. (Items 6 and 7) In OPM interviews he submitted to in 2012 and 2014, he failed to disclose his overlapping marriages before he was confronted by the interviewing agent.

Considering all of the circumstances surrounding Applicant's multiple omissions, inconsistencies, and misstatements he made in his e-Qips, employment applications, and OPM interviews, inferences are warranted that his multiple omissions and misstatements were either made deliberately or recklessly without any regard for the accuracy of his statements. Applicant's claims and explanations about his alleged omissions and misstatements were thoroughly assessed and considered, but could not be reconciled with the omissions and statements he made in his e-QIPs, employment applications, and OPM interviews.

Endorsements

Applicant provided no endorsements or performance evaluations on his behalf. Nor did he provide any proof of community and civic contributions.

Policies

The AGs list guidelines to be used by administrative judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns."

These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following AG ¶ 2(a) factors: (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.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent in this case:

Personal Conduct

The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, 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, ¶ 15.

Burden of Proof

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. *See United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security

clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. “[S]ecurity-clearance determinations should err, if they must, on the side of denials.” See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Security concerns are raised over Applicant’s overlapping marriages and multiple omissions and misstatements he made in his e-QIPs, employment applications, and OPM interviews over a period of years. These multiple omissions and misstatements cannot be reconciled with factual findings in the developed record. All of the addressed concerns cover questions of poor judgment, unreliability and untrustworthiness raised under Guideline E.

Overlapping marriages

Most of Applicant’s marriages overlapped over a number of years. While none of these marriages are alleged to create violations of the criminal law of Applicant’s state of residence, they do contravene his state’s longstanding bigamy law. Section 502(b) of Title 10 of his state’s bigamy law makes bigamy a felony, punishable by incarceration not to exceed nine years for violations. Section 502(b) prohibits a person from entering into a marriage ceremony with another while lawfully married to a living person. Applicant’s proven overlapping marriages fall clearly within the proscribed acts of marriage in section 502(b)

Because the overlapping marriage allegations are made under Guideline E, and not Guideline J, it is not clear whether the Government considered Applicant’s explanations of his overlapping marriages cleared him of any knowing and wilful violation of Section 502(b) Considering all of the circumstances of his multiple marriages under the governing bigamy law of his jurisdiction, his actions at the very least reflect judgment lapses indicative of untrustworthiness and unreliability concerns covered by Guideline E.

Based on current understandings of the institution of marriage in Applicant’s state of residence and nationally, Applicant’s determined overlapping marriages place him at risk to potential prosecution of his state’s bigamy law. His actions warrant conclusions that he displayed poor judgment, untrustworthiness, and unreliability in his failure to exercise greater care and responsibility in utilizing his state’s marriage and divorce laws to ensure his current marriages were concluded before applying for marriage licenses to authorize new ones. Security concerns associated with Applicant’s overlapping marriages are not mitigated.

e-QIP omissions and misstatements

In the process of completing a series of e-QIPs and employment applications between 1992 and 2011, Applicant committed multiple omissions and misstatements about his marriages, his employment history, and his military history. Applicant’s claims

and explanations about his state of mind cannot be reconciled with his collective actions. Considered together under all of the circumstances, Applicant's multiple omissions and misstatements reflect knowing and wilful omissions and misstatements that raise security concerns under Guideline E.

One of the disqualifying conditions covered by Guideline E is applicable. DC ¶ 16(a), "deliberate omission, concealment, or falsification of relevant facts to 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." DC ¶ 16(a) may be considered in evaluating Applicant's multiple e-QIP omissions and misstatements about his marriages, employment history, and military history.

Traditional assessments of falsification in ISCR proceedings include considerations of motive in determining whether particular applicants engaged in knowing and willful concealment. Both Guideline E and relevant case authorities underscore the importance of motive and subjective intent considerations in gauging knowing and willful behavior. See ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006)(citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)). See, generally, *United States v. Chapin*, 515 F.2d 1274, 1283-84 (D.C. Cir. 1975); *United States v. Steinhilber*, 484 F.2d 386, 389-90 (8th Cir. 1973); *United States v. Diogo*, 320 F.2d 898, 905 (2d Cir. 1963).

Under the facts and circumstances of this case, Applicant's omissions and misstatements were repeated in security and employment applications over a period spanning almost 20 years and reflect conscious attempts to conceal adverse information associated with his marriage, employment relationships, and military service. None of his multiple omissions and misstatements can be reconciled with actions indicative of mistake or misunderstanding. Credibility assessments are necessarily limited to the facts developed on the record without any oral input from a hearing to alter impressions developed from the documented exhibits.

To the extent mitigating considerations are necessary to correct any judgment lapses associated with Applicant's responses to the questions in his completed e-QIPs, employment applications, and OPM interviews about his marriages, employment history and military history, MC ¶ 17(a), "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts," if available to Applicant, could potentially undue the adverse effects of his determined deliberate omissions and misstatements. However, his OPM interview summaries do not reveal any good-faith corrections from Applicant until he was confronted by the interviewing OPM agent. MC ¶ 17(a) is not available to Applicant under these circumstances.

Nor is MC ¶ 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," is not available to Applicant. His multiple omissions and

misstatements are neither minor nor aged by time, and they continue to reflect judgment and trust lapses incompatible with eligibility to hold a security clearance.

From a whole-person assessment, Applicant is entitled to some recognition for the months he served in the Marine Corps in 1981-1982. In appreciation of his service, he received an honorable discharge. However, Applicant's multiple judgment lapses associated with (a) his certain marriages and past employment relationships and (b) his omissions and misstatements in his e-QIPs, employment applications, and OPM interviews more than outweigh his service contributions.

Endorsements, performance evaluations, and evidence of community and civic contributions could have been helpful to an in-depth whole-person assessment, but were not provided. Applicant's actions are not supportive of an overall reliability and trustworthiness assessment necessary to meet security clearance eligibility requirements.

Considering all of the circumstances surrounding Applicant's omissions and misstatements in the e-QIPs, employment applications, OPM interviews before confrontation, and whole-person assessment, Applicant's multiple omissions and misstatements reflect knowing and wilful actions on his part which are not mitigated. In making a whole-person assessment, careful consideration was given to the respective burdens of proof established in *Egan (supra)*, the AGs, and the facts and circumstances of this case in the context of the whole person. Unfavorable conclusions are warranted with respect to the allegations covered by subparagraphs 1.a through 1.w.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE E (PERSONAL CONDUCT):	AGAINST APPLICANT
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Subparagraphs 1.a through 1.w:	Against Applicant
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Conclusions

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is denied.

Roger C. Wesley
Administrative Judge

