



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



In the matter of:)
)
) ISCR Case No. 12-04855
)
Applicant for Security Clearance)

Appearances

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

07/18/2013

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility for a security clearance to work in the defense industry. Applicant willfully divulged classified information to unauthorized persons. He does not accept responsibility for his actions and continues to minimize the seriousness of his security violation. Clearance is denied.

Statement of the Case

On September 20, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under the handling protected information and personal conduct guidelines.¹ DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue Applicant’s security clearance

¹ This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

and recommended that the case be submitted to an administrative judge for a determination whether to revoke or deny Applicant's security clearance.

Applicant answered the SOR and requested a decision without a hearing. Department Counsel submitted its written case on March 12, 2013. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on March 25, 2013. He did not submit a response. The items appended to the Government's brief are admitted as Government's Exhibits (GE) 1 through 7. The case was assigned to me on May 8, 2013.

Findings of Fact

Applicant, 26, is an employee of a federal contractor. He is married with no children. In 2005, at age 19, Applicant enlisted in the Navy. He was discharged under other than honorable (OTH) conditions in June 2010.²

Between January and December 2009, Applicant was stationed aboard a submarine, completing two deployments during that period. As a fire control technician, Applicant's job involved the operation and maintenance of the ship's weapons control systems. On December 14, 2009, Applicant received a letter from his commanding officer informing him that his access to classified information was suspended. The next day, Applicant was debriefed and his commanding officer ordered an investigation into dereliction of duty charges made against Applicant. Two days after receiving notice that his clearance was suspended, Applicant signed a handwritten confession, admitting that he willfully disclosed classified information to his parents and girlfriend in violation of Article 92 of the Uniform Code of Military Justice (UCMJ) and the March 2007 non-disclosure agreement he signed. Applicant believed that his acts were harmless, blaming the unauthorized disclosures on emotional distress caused by the death of his grandfather. At the non-judicial punishment (Captain's Mast) convened on December 18, 2009, Applicant was found guilty of dereliction of duty.³

Applicant's squadron commander completed a Security Access Eligibility Report (SAER) in January 2010. Having lost all confidence in Applicant's ability to maintain a security clearance, the squadron commander recommended that the Department of the Navy Central Adjudication Facility remove Applicant's security clearance completely. He also recommended Applicant's administrative discharge from active duty.⁴

In January 2012, Applicant completed a security clearance application. He disclosed his other than honorable discharge from the Navy, listing an administrative discharge as the reason for his separation. He also disclosed his December 2009 Captain's Mast, explaining that that he was charged with failure to follow an order. In

² GE 5.

³ GE 6.

⁴ GE 6.

response to questions about his security clearance history, Applicant disclosed a 2006 security clearance investigation conducted by the Navy and a 2011 public trust position investigation. He denied ever having a security clearance suspended or revoked in response to “Question 25: Denied Clearance: Have you **EVER** had a security clearance eligibility/ access authorization denied, suspended, or revoked?” Applicant denies he falsified the security clearance application. He believed his security clearance was administratively terminated when the Navy transferred him from the submarine to a command that did not require access to classified information. Question 25 also states that an administrative downgrade or administrative termination of a security clearance is not a revocation and does not need to be reported. Applicant cites his clearance status in the Joint Personnel Adjudication System (JPAS) to support his assertion. However, the JPAS incident reports indicate that Applicant committed a security violation, and summarizes the disposition of the Captain’s Mast and Applicant’s OTH discharge from military service.⁵

Applicant also denies that he willfully disclosed any classified information. Applicant explains that he kept a journal that he intended to give to his girlfriend upon returning home from his deployments so that she could better understand “the stress and day to day living conditions [he] endured.” He explains that he did not record the ship’s coordinates or identify nearby countries in his journal, but wrote only general statements that described the activities of his day or general ship operations. The Navy, Applicant argues, did not provide him any security training about what type of information should be excluded from a personal journal. Nor, in Applicant’s opinion, did the Navy provide adequate training on handling personal relationships while on long-term deployments or relieving stress after combat operations.⁶

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 list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s eligibility for access to classified information.

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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

⁵ GE 4-5, 7.

⁶ GE 4.

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.

Section 7 of EO 10865 provides that adverse 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

Handling Protected Information

Applicant deliberately disclosed classified information to unauthorized persons.⁷ His actions show his inability to properly handle or safeguard classified information or follow the rules regarding the protection of classified information.⁸ Even though the security breach occurred almost three-and-a-half years ago, the events continue to reflect negatively on Applicant’s current security worthiness. His claims that he did not receive adequate security training are not credible. Instead of taking responsibility for his actions, he continues to minimize the seriousness of the security violation he committed. Applicant failed to present any evidence to support a finding of reform or rehabilitation. Accordingly, none of the relevant mitigating conditions apply.

Personal Conduct

Applicant’s decision to reveal classified information to his family members shows questionable judgement and poor character.⁹ In the years since the security violation, Applicant continues to prove himself an unacceptable security risk. He deliberately omitted his December 2009 security clearance suspension from his January 2012 security clearance application. Generally, evidence of omission alone is not sufficient to establish intentional falsification, but the record in this case contains direct and circumstantial evidence of Applicant’s intent to mislead the government about his past security violation.

Loss of a security clearance is a consequential event. In Applicant’s case, it was caused by a security violation that resulted in his other than honorable discharge from military service.¹⁰ His purported confusion over the status of his clearance after December 2009 is disingenuous. Applicant knew that his past posed an obstacle to his

⁷ AG ¶ 34(a).

⁸ AG ¶ 33.

⁹ AG ¶ 15.

¹⁰ AG ¶ 16(a).

future employment as a federal contractor and his ability to obtain a security clearance. So, in an attempt to conceal his past from the Government, he presented accurate, but misleading information about his military service on his security clearance application. Applicant parsed out enough information to alert the Government that some type of serious misconduct occurred during his four-year enlistment, but he provided no information to suggest that the misconduct involved a security violation. To the contrary, Applicant intentionally created the impression that despite the circumstances of his OTH discharge from the military that he held a security clearance and a public trust position in the past, without incident. In addition to this circumstantial evidence of Applicant's intent to conceal information from the government, he cannot overcome the evidence that he received direct notice of his security clearance suspension from the ship's commanding officer.

None of the personal conduct mitigating conditions apply. Applicant's omission is neither minor nor immaterial. He sought to conceal information critical to an assessment of his security worthiness. Applicant has repeatedly shown that his self-interests supersede any government interests.

Applicant has not proven himself suitable for access to classified information. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. In doing so, I have also considered the whole-person concept as described in AG ¶ 2(a). The federal government must be able to repose a high degree of trust and confidence in persons granted access to classified information.¹¹ Security clearance decisions are not an exact science, but rather are predictive judgments about a person's security suitability in light of that person's past conduct and present circumstances.¹² Not only has Applicant breached his fiduciary duty to protect classified information in the past, he tried to conceal his prior bad acts from the government. He shows little contrition or remorse for his actions. Applicant presented no evidence to suggest that he will take his responsibility to protect and safeguard classified information more seriously today, than he did while serving in the Navy. Accordingly, his clearance is denied.

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, Handling Protected Information:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant

¹¹ *Snepp v. United States*, 444 U.S. 507, 511 n.6 (1980).

¹² *Department of Navy v. Egan*, 484 U.S. 518, 528-29 (1988).

Paragraph 2, Personal Conduct:

AGAINST APPLICANT

Subparagraph 2.a – 2.b:

Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Nichole L. Noel
Administrative Judge