



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



In the matter of:)
)
) ISCR Case No. 12-11892
)
Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

06/27/2013

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings, exhibits, and testimony in this case, I conclude that Applicant failed to rebut or mitigate the Government's security concerns under Guideline E, Personal Conduct. Applicant's eligibility for a security clearance is denied.

Statement of Case

Applicant completed and certified an electronic questionnaire for investigations processing (e-QIP) on November 2, 2011, and he reaffirmed his certification on November 15, 2011. He also completed and signed standard form 85P public trust position applications on November 10, 2006 and October 3, 2008. On October 15, 2012, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline E, Personal Conduct. DOD acted 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 (AG) effective within the DOD for SORs issued after September 1, 2006.

Applicant's notarized answer to the SOR was dated November 19, 2012. He attached 41 documents to his answer, and he elected to have a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on March 29, 2013. The parties agreed to a hearing at 2:30 pm on April 29, 2013. On April 26, 2013, Applicant informed Department Counsel and me that he had been hospitalized with a health issue that required a follow-up assessment. He requested that his hearing be postponed. Department Counsel did not object to a postponement. Applicant's hearing was rescheduled for 1:30 pm on May 20, 2013. I convened the hearing as rescheduled to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

The Government called two witnesses and introduced 11 exhibits, which were marked Ex. 1 through Ex. 11. Ex. 1, Ex. 2, Ex. 4, Ex. 6, Ex. 7, Ex. 8, and Ex. 9 were admitted without objection. Ex. 3, Ex. 5, Ex.10, and Ex. 11 were admitted to the record over Applicant's objection. Applicant testified, called one witness, and introduced ten additional exhibits. I identified and marked Applicant's documents which were submitted with his answer to the SOR as Ex. A through Ex. AA.¹ I identified and marked the documents Applicant submitted at his hearing as Ex. BB through Ex. KK. The exhibits attached to Applicant's answer to the SOR were admitted to the record, with the exception of Ex. Y, which was an article he wrote in Arabic and Ex. AA, an article he wrote in German. I took notice of both exhibits, not for their content, but for the limited purpose of recognizing Applicant's work product. Applicant's Ex. CC was not admitted to the record, but I advised Applicant I would keep the hearing record open until June 3, 2013, so that he could provide letters of character reference, if he wished, from individuals identified in Ex. CC. Applicant did not provide any additional documents by the time the record closed. DOHA received the hearing transcript (Tr.) on June 12, 2013.

Findings of Fact

The SOR contains three allegations of disqualifying conduct under Guideline E, Personal Conduct (SOR ¶¶ 1.a., 1.b., and 1.c.). In his Answer to the SOR, Applicant admitted the allegation at SOR ¶ 1.b. and provided additional information. He denied the allegations at SOR ¶¶ 1.a. and 1.c. Applicant's admission is entered as a finding of fact. (SOR; Answer to SOR.)

Applicant is 36 years old, married, and the father of two young children. He was born in Afghanistan, and when he was a young child, his family moved to Europe, where he was raised and educated. From 1999 until 2004, he attended a European university, and in 2005, he was awarded a bachelor's degree from the European university. As a result of his life experiences and education, Applicant is proficient in

¹ Although his documents numbered 41, several of Applicant's documents were grouped into compilations of similar documents, which explains how 41 documents resulted in 27 exhibits. After the hearing, for clarity and to avoid confusion, I redesignated the documents provided by Applicant at his hearing to follow in alphabetical sequence the documents he provided with his answer to the SOR.

English, at least one additional European language, and several Middle Eastern languages. (Ex. 1; Ex. Y; Ex. AA; Tr. 145-147.)

Applicant immigrated to the United States and became a permanent resident in 2003. He worked as a marketing consultant, restaurant manager, business development consultant, evaluator of the proficiency of teachers of foreign languages, and as a translator and instructor (Ex. 1.)

Applicant completed security clearance applications in 2006 and 2008. He was first awarded a security clearance in 2008. In 2009, he enrolled in an on-line master's degree program at a U.S. institution. He took one class, but did not continue in the program. He became a U.S. citizen in 2011. (Ex. 1; Tr. 148-149.)

In May 2010, he applied for a teaching position in a program at a U.S. university. The program specialized in teaching Middle Eastern languages and culture to members of the U.S. military. As a part of his application, Applicant submitted his resume, which, in a profile summary on page one, identified him as an "Associate Professor, cultural advisor and translator with a MBA [Master of Business Administration degree] in General Management." The resume further specified on page two that Applicant had earned the MBA degree in 2009 from the institution at which he had enrolled in the on-line master's degree program and completed one course. (Ex. 3; Tr. 150,152.)

Applicant was interviewed on the telephone by the administrative director of the program. In June 2010, Applicant was offered a position in the program as a curriculum developer and instructor in a Middle Eastern language. The offer letter, which was signed by the administrative director, the director of the program, and the university's provost and vice-president for academic affairs, requested a response by July 6, 2010. The offer letter also requested that Applicant provide an official transcript of his most recent academic studies as soon as possible. Applicant accepted the offer by signing, dating, and returning the offer letter to the administrative director of the program. He assumed his duties in the program in August 2010. He did not provide an official transcript of his most recent academic studies, as had been requested. (Ex. 3; Ex. 4; Tr. 152-156.)

The director of the program, a former high-ranking U.S. military officer with approximately 30 years of service, testified as a Government witness at the hearing. He stated that a master's degree was not a requirement of the position for which Applicant was hired, but the possession of a master's degree would give a candidate a considerable advantage in the selection process. Having a well-credentialed instructional staff was important in competing for contracts and in maintaining the program's professional credibility for accreditation purposes, he said. The program published a faculty contact roster showing the positions and professional degrees held by the nine members of the instructional staff. The roster reflected that one faculty member possessed a medical degree; three faculty members, including Applicant, possessed Master of Arts degrees; and five members possessed Bachelor of Arts degrees. (Ex. 5; Tr. 47-50.)

The director testified that when he hired Applicant he believed Applicant's representation that he held a master's degree. When, over the ensuing academic year, Applicant did not submit evidence of his master's degree, as requested, the director asked him several times to provide a copy of his academic transcript and degree. (Tr. 51-53.)

One of the prerequisites of Applicant's academic appointment at the university was the opportunity to pursue tuition-free graduate studies. In the spring of 2011, Applicant decided to enroll in a Ph.D program in anthropology, and he asked the director to provide a letter of reference for him. Before writing the letter of reference for Applicant, the director asked him to provide a copy of his most recent academic transcript and degree. Applicant did not provide this information to the director, even though the director asked him for it several times. (Tr. 51-53, 79.)

The program's deputy director for administration and finance (deputy director)² also testified as a witness for the Government. He recounted that he had been hired after Applicant, and his office was near Applicant's. He stated that he socialized with Applicant, and on one occasion, while they were drinking beer at a pub, Applicant told him he was "currently seeking his MBA." (Ex. 11; Tr. 85-86.)

The deputy director testified that after reviewing the record of another person the program wished to hire, the university human resources staff asked him to obtain the most recent transcripts and diplomas for all instructional staff in the program who had not previously provided that information. On September 12, 2011, the deputy director sent an e-mail request to five members of the instructional staff, including Applicant, and requested that they provide him with their most recent transcripts and diplomas no later than September 20, 2011. (Ex. BB; Tr. 87-91.)

When Applicant did not provide the requested information by the deadline, the director called him to a meeting to discuss the matter. The deputy director was also at the meeting. The director showed Applicant the resume he submitted when he applied for a position in the program. The resume stated that Applicant possessed a MBA in General Management, acquired in 2009. When asked by the director if he had such a degree, Applicant replied that the resume contained a mistake: he did not have a MBA, but he almost had one. Under further questioning by the director, Applicant admitted that he had completed only one course toward an MBA degree. (Tr. 53-54; 91-93.)

After hearing Applicant's explanation, the director had the following reaction:

Well my reaction was that I had somebody that was telling an out and out boldfaced lie to me and to my university and to our [D]efense [D]epartment quite frankly about their qualifications. It was a needless lie anyway but nonetheless it was a lie and one that we had more than staked our

² The witness's job title in September 2011 was "manager, administration and curriculum development." (Ex. BB.)

reputation on and reputation [is] important to me, it's important to our university and for the Defense Department. So my reaction was to tell him that he had two choices. He could resign or I would immediately at the end of the meeting take action with the [human resources] department at the [university] and have him terminated. He resigned. (Tr. 54-55.)

In a letter dated September 23, 2011, Applicant resigned from his position as an instructor in the program for "personal reasons." The director testified that Applicant was a pleasant person, fluent in English, and performed his duties as an instructor and curriculum developer adequately. He stated that he would have had no reason to fire him based upon his job performance. (Tr. 55-56.)

The director further explained his decision to terminate Applicant if he did not resign:

The bottom line is for the same reason that it's important to have integrity as a teacher at a university when you are teaching defense department students or anybody else[,] [I]t's also important that you have a high standard of integrity if you have a United States of America security clearance period. The bottom line here is for the most part he lost my trust. And trust is probably the quintessential component for somebody to hold a security clearance. (Tr. 57.)

Applicant acknowledged that he did not have a master's degree. He stated that he asked a friend to help him with his resume, and the resume he submitted with his application had mistakes in it. Applicant claimed he was "a victim of internal miscommunication and misunderstanding." He testified that he had been teaching Middle Eastern languages and culture to U.S. military since 2006. Applicant's students and former managers and colleagues found him to be an innovative teacher with a strong work ethic. (Ex. P; Ex. R; Ex. EE; Tr. 137-140.)

Applicant's wife appeared as a witness. She testified that Applicant was a good husband and father. She stated that neither she nor Applicant was employed, and they were supporting themselves with their savings. (Tr. 108-110.)

When Applicant completed his e-QIP in November 2011, he was asked to respond to Section 13c, which inquires about an applicant's employment record. Section 13c asks: "Has any of the following happened to you in the last 7 years? 1. Fired from job. 2. Quit a job after being told you would be fired. 3. Left a job by mutual agreement following charges or allegations of misconduct. 4. Left a job by mutual agreement following notice of unsatisfactory performance. 5. Left a job for other reasons under unfavorable circumstances. Laid off from job by employer. (Ex. 1.)

Applicant answered "No" to all elements of Section 13c. The SOR alleges at ¶ 1.c. that Applicant deliberately failed to disclose that he had resigned from his teaching

position in September 2011 after he was confronted with falsifying his resume and academic credentials. (Ex. 1.)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant an applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

When evaluating an applicant’s suitability for a security clearance, an 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 used 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, the administrative judge applies these guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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.

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 explains why personal conduct is a security 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 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 applied for an academic position and submitted a resume falsely claiming that he possessed a master of business administration degree. After failing to submit his most recent academic credentials, Applicant was confronted by a responsible university official and admitted he did not have a master of business administration degree. The official, the director of program that trained military personnel, advised Applicant in September 2011 that if he did not resign, he would be fired. Applicant resigned.

Two months later, in November 2011, Applicant sought employment as a federal contractor and completed an e-QIP. In response to Section 13c on the e-QIP, Applicant answered “No” when asked if he had ever quit a job after being told he would be fired; left a job by mutual agreement following charges or allegations of misconduct; left a job by mutual agreement following notice of unsatisfactory performance; or left a job for other reasons under unfavorable circumstances.

Applicant’s personal conduct raises security concerns under AG ¶¶ 16(a) and 16(b). AG ¶ 16(a) reads: “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.” AG ¶ 16(b) reads: “deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.”

Several Guideline E mitigating conditions might apply to Applicant’s personal conduct. If “the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts,” then AG ¶ 17(a) might apply. AG ¶ 17(b) might apply in mitigation if “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.” AG ¶ 17(c) might apply if “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.”

In his answer to the SOR and at his hearing, Applicant denied intentionally falsifying his resume by claiming to have a degree he had not earned (SOR ¶ 1.a.). He also denied intentionally falsifying his answer to Section 13c on his e-QIP (SOR ¶ 1.c.).

DOHA’s Appeal Board has cogently explained the process for analyzing falsification cases:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant’s intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant’s intent or state of mind at the time the omission occurred.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).

I considered all the record evidence in this case, and I observed Applicant carefully at his hearing. I listened to his testimony and I assessed his credibility. On the basis of my observations and the record evidence, I conclude that Applicant deliberately falsified his academic credentials and claimed to possess an academic degree he had not earned. I also conclude that, two months after being told that if he did not resign from his position he would be fired, Applicant deliberately falsified his answer to Section 13c on the e-QIP he completed by answering “No” when asked if in the previous seven years he had quit a job when he had been told he would be fired. I conclude that Applicant has failed to rebut or mitigate his unreliable and untrustworthy behavior, and it is likely to recur. Accordingly, I conclude that AG ¶¶ 17(a), 17(b), and 17(c) do not apply in this case.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all relevant 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) 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.

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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is a mature adult whose defense contractor experience has provided him with knowledge of the security clearance process and its policies. He knows, or should know, of the importance of telling the truth on a security clearance application and of submitting a truthful resume to an employer who is a government contractor.

Applicant appears to be a dedicated teacher and a talented writer in several languages. His employer at the university noted that he was a pleasant person. His students and former coworkers observed that he was an innovative teacher with a strong work ethic. His wife testified that he is a good husband and father. Ironically, the academic position for which Applicant applied did not require a master's degree. At issue in this case is not Applicant's professional competence but his truthfulness. Applicant's personal conduct raises serious concerns about his judgment, reliability, and trustworthiness.

The record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising from his personal conduct.

