



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



In the matter of:)	
)	
)	ISCR Case No. 13-00917
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Esq., Department Counsel
For Applicant: *Pro se*

April 8, 2014

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant failed to sufficiently mitigate the Personal Conduct security concerns. Applicant was cited four times between 2006 and 2012 for various minor offenses. He failed to list those citations on his October 2012 Electronic Questionnaire for Investigations Processing (e-QIP). Additionally, his employment was terminated three times by different employers, between 2006 and 2012. He is repaying a past-due debt. Although he mitigated some security concerns, doubts concerning his judgment and reliability remain unresolved. Eligibility for access to classified information is denied.

Statement of the Case

On October 15, 2012, Applicant completed an e-QIP. On November 19, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline E, Personal Conduct. The action was taken under Executive Order (EO) 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 Adjudicative Guidelines (AG) effective after September 1, 2006.

Applicant answered the SOR on December 18, 2013 (Answer). He requested a hearing before an administrative judge in his Answer. The case was assigned to me on February 25, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 28, 2014, and the hearing was convened as scheduled on March 17, 2014. The Government offered Exhibits (GE) 1 through 7, which were admitted without objection. The Government also presented one Hearing Exhibit, marked HE 1, which was admitted into the record. Applicant offered Exhibits (AE) A through N, which were admitted without objection. Applicant testified on his own behalf. He requested that the record remain open for receipt of additional documentation. On March 21, 2014, Applicant submitted a 26-page fax, marked AE O through T.¹ Department Counsel had no objections to AE O through T and they were admitted into evidence. The record then closed. DOHA received the hearing transcript (Tr.) on March 26, 2014.

Findings of Fact

Applicant is 36 years old. He is a high school graduate and has obtained a professional license. He has been employed by a government contractor since 2012 and seeks a security clearance in connection with his employment. He is married and has no children. (GE 1; Tr. 55, 77-78, 86.)

The Government alleged that Applicant is ineligible for a clearance due to his personal conduct. Applicant admitted the SOR allegations contained in subparagraphs 1.a, 1.c, 1.d, and 1.f through 1.i. He denied SOR allegation 1.e. He admitted in part, and denied in part, allegation 1.b. (Answer.) The security concerns are set out below.

In January 2006 Applicant was cited for exceeding the 70-mph speed limit, as alleged in subparagraph 1.a. He was fined \$210.² In 2008 he served 14 days in jail in lieu of the fine, as stated in the court records provided by Applicant. Applicant was unable to recall the circumstances surrounding this citation. He believes that he was under financial strain at the time because he was terminated from a job and was making less money, as further discussed below. He admitted he was irresponsible at that time. (AE Q; Tr. 44, 55-58.)

In May 2008 Applicant was cited for no registration; failure to provide evidence of financial responsibility; driving with license suspended or revoked; and failure to appear. He was convicted of driving with a suspended or revoked license and the other charges were dismissed. Applicant was sentenced to serve nine days in jail in lieu of a \$896 fine;

¹ Applicant labeled his post-hearing submission Exhibits O through Q. I renamed them as identified herein.

² The SOR incorrectly alleged the fine to total \$476. Applicant provided documentation from the court that showed the fine was \$210.

and pay counsel fees of \$100.³ Applicant paid his \$100 fine and was placed on probation for 24 months. His probation expired November 2010. (AE R; Tr. 44, 58-60.)

Applicant testified that after he was cited for driving with a suspended or revoked license, his vehicle was impounded. He did not have money to pay for the release of the car, and it was repossessed from the impound lot. The repossession resulted in a judgment against him in the amount of \$9,141, as identified in SOR subparagraph 1.f. Applicant contacted this creditor in August 2013 and arranged to make monthly payments of \$109 on the debt. A letter from the creditor, dated March 21, 2014, indicated Applicant was "current as-to-date with [his] scheduled payment arrangements." (GE 2; GE 3; GE 4; GE 7; AE B; AE I; AE S; Tr. 61, 70-73.)

In May 2012 Applicant was cited with driving with no operator's license; driving while license suspended; and exceeding 55-mph speed limit. He was convicted of driving with no operator's license and the other two charges were dismissed. He was fined \$205, but \$100 of the fine was suspended. He paid \$105.20 on August 9, 2013, which resolved this matter. (GE 4; Tr. 62-64.)

In August 2012 Applicant was cited for adult use of a cell phone while driving; driving while license suspended; failure to appear; and no operator's license. On November 30, 2012, he pled guilty to no operator's license and the other charges were dismissed. He was fined \$690. He paid the fine in full on March 7, 2014. (GE 4; AE N; Tr. 45, 64-65, 70.)

The Government alleged Applicant falsified his October 15, 2012 e-QIP, by not listing the above citations in his response to the first four bullet points in Section 22. of the e-QIP which asked:

Police Record – Have any of the following happened?

- In the past seven (7) years have you been issued a summons, citation, or ticket to appear in court in a criminal proceeding against you? (Do not check if all the citations involved traffic infractions where the fine was less than \$300 and did not include alcohol or drugs).
- In the past seven (7) years have you been arrested by any police officer, sheriff, marshal or any other type of law enforcement official?
- In the past seven (7) years have you been charged, convicted, or sentenced of a crime in any court? (Include all qualifying charges, convictions or sentences in any Federal, state, local, military, or non-U.S. court, even if previously listed on this form).
- In the past seven (7) years have you been or are you currently on probation or parole?

³ Applicant denied serving any time in jail. He claimed he performed community service instead. (Tr. 46.)

- Are you currently on trial or awaiting a trial on criminal charges?” (GE 1.)⁴

Applicant answered “No” to this entire section. He testified that his citations were all traffic offenses and he did not recall a fine of more than \$300. This was the first time he had completed an e-QIP and he found it “vague.” He indicated he had not been sentenced for his August 2012 conviction at the time he completed the e-QIP, so he did not disclose it. Applicant’s explanations were not credible. The questions are unambiguous. (GE 1; Tr. 47, 70.)

Applicant’s employment was terminated three times, by different employers, between 2006 and 2012, as stated in SOR subparagraphs 1.g, 1.h, and 1.i. His first termination was in November 2006. He was working and attending school full time. He was in a professional-licensing program that required eight-hour attendance daily. His performance at work suffered and he was terminated due to his loss in productivity. As a result of the termination, his income declined significantly. He was unable to find a job at the same pay rate that would allow him to pursue his professional license. In 2008 Applicant was terminated from his employment as a security guard when he fell asleep at work. He was still attending school full time and working full time when he was terminated. His most recent termination occurred in March 2012 after Applicant admitted responsibility for damaging equipment at work. He testified that the equipment was accidentally damaged. (GE 1; GE 5; Tr. 43-44, 47-50, 55, 73-74.)

Applicant testified that he has matured and is now responsible. He attributes his past problems to irresponsibility and financial hardships. He now has a monthly net remainder of \$989. He currently has saved \$8,868 in a retirement savings plan and has satisfied a number of previously delinquent accounts. He has not had any citations since 2012. He maintains a valid driver’s license and vehicle registration. (AE T; AE J; AE K; AE L; Tr. 50-55, 65-68, 80-86.)

Applicant presented a number of letters of recommendation from business associates and friends. Applicant is respected for his honesty, trustworthiness, and integrity by his professional contacts. His awards, recognitions and accolades reflect his on-the-job achievements. However, in April and May 2012, Applicant received two “verbal warnings” from his present employer for clocking out of lunch late and tightening a part too tightly. (GE 5; AE C; AE D; AE F; AE G; AE H; AE M.)

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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.

⁴ The SOR failed to allege that Applicant falsified his answer to the question, “Are you currently on trial or awaiting a trial on criminal charges?”

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing 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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable clearance 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 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

Guideline E, Personal Conduct

The security concern for the Personal Conduct guideline is set out in AG ¶ 15:

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. The following disqualifying conditions are potentially applicable:

(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

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information.

Applicant failed to disclose his citations, charges, and convictions in his response to Section 22. The evidence reflects that Applicant was not required to identify his May 2012 citation on his e-QIP, but that his January 2006 and May 2008 offenses were intentionally omitted. His claim that he did not need to disclose them because they were traffic infractions where the fine was less than \$300 and did not include alcohol or drugs was not credible. He knew he performed community service or jail time in lieu of the higher fines. He also knew that he was on probation until November 2010 for the May 2008 conviction.⁵ AG ¶ 16(a) is disqualifying.

Applicant established a pattern of poor personal conduct from 2006 to at least 2012, which demonstrates questionable judgment and an unwillingness to abide by rules. He has exhibited poor conduct at work that led to his termination from three jobs, violated traffic laws repeatedly, failed to appear in court when summoned, and had an unpaid delinquent account reduced to a judgment against him, indicating financial issues. AG ¶ 16(c) applies.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(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

⁵ He was awaiting a trial on the August 2012 charges at the time he completed the e-QIP and should have disclosed it, but falsification of that specific question was not alleged in the SOR. However, under the whole-person concept, this additional falsification is considered below.

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; and

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

None of the above mitigating conditions apply. Applicant did not make prompt or good-faith efforts to correct his falsification or concealment. He provided no evidence that indicates he was ill-advised in completing his e-QIP. Applicant's past poor decisions manifest themselves in numerous ways, including criminal, financial, and job performance. The offenses, when considered as a pattern of conduct, are not minor or insignificant. While he is now paying his judgment and has not had a citation for over a year, not enough time has passed since his last infraction in 2012 to suggest that he has fully matured. He was an adult when he engaged in each instance of misconduct. I cannot find that such behavior is unlikely to recur. Vulnerability to exploitation, manipulation, or duress remains undiminished.

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 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 pertinent facts and circumstances surrounding this case. Applicant is a hardworking and dedicated employee who is well liked by his peers. While he is making payments on his judgment and claims he has matured, he failed to produce sufficient evidence that he possesses the good judgment required of those entrusted with classified information. He intentionally falsified information on his e-QIP concerning his January 2006 and May 2008 offenses. Additionally, while it was not properly alleged in the SOR, he was not candid with the government concerning his August 2012 citation that was pending trial at the time he completed the e-QIP. His work history reflects a record of poor performance. His record of traffic infractions extend over a six-year period of questionable judgment. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the personal conduct security concerns.

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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	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.

Jennifer I. Goldstein
Administrative Judge