



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



In the matter of:)
)
) ISCR Case No. 14-02993
)
)
Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

03/31/2016

Decision

CURRY, Marc E., Administrative Judge:

The amount of time that has elapsed since Applicant’s last security violation, in tandem with his rehabilitation outweigh the nature and seriousness of the conduct. Applicant has mitigated the security concerns. Clearance is granted.

Statement of the Case

On December 12, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under the guidelines covering the handling of protected information and personal conduct. The action was taken under Executive Order 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) implemented by DoD on September 1, 2006.

Applicant answered the SOR on December 22, 2014. He admitted the allegations and requested a hearing. The case was previously assigned twice to other administrative judges before I received it on October 23, 2015. I scheduled the hearing for December 9, 2015, and held it, as scheduled. I received five Government exhibits (GE 1-GE 5), and six Applicant exhibits (AE A - AE F). Also, I considered the testimony of Applicant and two character witnesses.

At the close of the hearing, I left the record open for two weeks for counsel to prepare briefs supplementing their respective closing arguments. Both counsel filed briefs within the time allotted. I have identified and incorporated them into the record as HE I (Brief of Department Counsel, dated December 15, 2015), and HE II (Brief of Applicant's Counsel, dated December 15, 2015). The transcript was received on December 29, 2015.

Findings of Fact

Applicant is a 30-year-old married man. He earned a bachelor's degree in 2009, and has nearly completed a master's degree. He has been working for his current employer since 2010, as a test engineer. (GE 1 at 15)

Applicant is highly respected on the job. Supervisors characterize him as a good, energetic, hard-working performer who is intensely dedicated to getting the job done. A coworker described him as forthcoming about any product problems, always disclosing them to customers and looking for solutions, rather than "sweeping [them] under the rug." (AE E at 7) He is an industrious worker, sometimes working overnight on the weekends. (Tr. 32) On one occasion, Applicant worked 36 straight hours to ensure that product testing was complete. (AE E at 2-8) In April 2013, his employer awarded him the "can-do" award for his stellar performance. (Tr. 30)

February 2013, Applicant left a secured work area without locking his computer. Subsequently, he received a written reprimand, verbal counseling, and retraining on the proper procedures for securing work areas. (Answer at 1)

In March 2013, Applicant failed to turn the dial on the lock to secure a work area after leaving the area. He received another written reprimand, and more security retraining. In addition, he was advised that if a third offense occurred, he would be subject to a 24-hour suspension of his security access. (Answer at 1)

In June 2013, Applicant violated his company's protocol when he failed to properly complete an equipment transfer request form for two pieces of equipment. (Tr. 29, 62; Answer at 2) These forms were used to track inventory. Employees are supposed to complete these forms and give them to the security officer, who was responsible for filing them. (Tr. 62) Applicant completed the form, but left the date blank. He could not find the security officer after completing the form. Therefore, he left the date blank when he delivered the form to the security officer's office, anticipating that the security officer would date it when he reviewed and signed it. (Tr. 62)

In July 2013, Applicant failed to properly secure his work computer after leaving a secured area. Subsequently, he received a written reprimand and was retrained on the proper procedures. (Answer at 2)

In September 2013, Applicant again failed to properly secure his work computer after leaving a secured area. Subsequently, he received a written reprimand, was retrained, and suspended from work for five days without pay. (Answer at 2)

Applicant attributes his carelessness to being overextended. (Answer at 2) He was working hard at the expense of security awareness. (Tr. 73-74) Since his last security violation, he has talked with his supervisors about reducing his workload so that he can pay more attention to detail. (Tr. 65) Now, he is a more cautious, mature employee who works slower, but makes fewer mistakes. (Tr. 32, 64)

Although Applicant has not had a security clearance in nearly three years, he still has had a responsibility not to leave his computer unlocked at his unsecured work space when he leaves his desk. (Tr. 59) He has not violated this protocol since being transferred to the unsecured work space. (Tr. 60)

Applicant's current and former supervisors testified. Both strongly endorsed the restoration of his security access. His former supervisor, who supervised him in 2013, attributed Applicant's mistakes, in part, to a change in company protocol regarding handling protected information. These changes took everyone "some getting used to." (Tr. 29) Specifically through 2011, every employee working in a secured workspace shared one group computer password. The only person who had a responsibility to lock the computer was the last one to leave the office for the day. (Tr. 43) (Tr. 28) At some time in 2011, their company was purchased by another company. It required all of the employees to have individual passwords. Under the new policy, each employee had to secure their respective computers each time they left the secured area. (Tr. 26) Everyone had trouble adjusting to this new procedure, and several employees, including some supervisors, made mistakes similar to Applicant's. (Tr. 26, 69) Similarly, the new company implemented a more stringent procedure for transferring equipment after it purchased the business. (Tr. 29) Applicant received training on the new policy changes approximately two years before he committed the security violations. (Tr. 51)

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.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. 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.”

Under Directive ¶ E3.1.14, the government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, Applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

Analysis

Guideline K, Handling Protected Information

Under this guideline, “[d]eliberate or negligent failure to comply with rules and regulations for protecting classified or other sensitive information raises doubt about an individual’s trustworthiness, judgment, reliability, or willingness and ability to safeguard such information, and is a serious security concern” (AG ¶ 33). Applicant’s failure to properly lock a secured area after leaving, and his repeated failure, despite retraining, to lock his computer after leaving his desk trigger the application of AG ¶¶ 34(a), “. . . any failure to comply with rules for the protection of classified or other sensitive information,” and 34(h), “negligence or lax security habits that persists despite counseling by management.”

It is unclear from the record whether the equipment that Applicant sought to transfer when he failed to obtain the required transfer signature was either classified or sensitive. Consequently, although this oversight raises personal conduct security concerns, as discussed *infra*, it does not trigger a security concern under Guideline K. I resolve SOR subparagraph 1.c in Applicant’s favor.

Applicant received security training before his security lapses and retraining after each security lapse. The mitigating condition set forth in AG ¶ 34(c), “the security violations were due to improper or inadequate training,” does not apply.

Applicant has not committed a security violation in nearly three years. Although he has not worked in a secured environment in this time, this fact is still significant, as he has matured, focusing less on speed and more on efficiency. Consequently, his work product has improved. Applicant has also identified the main problem contributing to his security lapses (overwork), and with the input of his supervisors, reduced his workload so that he can better balance his work responsibilities with his security maintenance responsibilities. Consequently, AG ¶ 34(b), “the individual responded favorably to counseling or remedial security training and now demonstrates a positive attitude toward the discharge of security responsibilities,” applies.

Applicant's counsel, in his post-hearing brief, characterizes Applicant's security violations as minor. There are no minor security violations, as such conduct strikes at the heart of the industrial security process. (ISCR Case No. 11-09219 at 3 (App. Bd. Mar. 31, 2014)) Nevertheless, the fact that Applicant's lapses occurred while overzealously trying to manage an extremely large workload does weigh in his favor. Given Applicant's supervisors' enthusiastic character references, I am persuaded that his security violations were a product of failing to pay sufficient attention to security matters, rather than bad judgment or character. Under these circumstances, the time that has elapsed since the last violation outweighs the nature and seriousness of the conduct.

Guideline E, Personal Conduct

Under this guideline, "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" (AG ¶ 15).

Applicant's conduct triggers the application of AG ¶ 16(d)(1) ". . . unreliable behavior," and AG ¶ 16(d)(3), "a pattern of rule violations." Applicant's repeated security violations generate a security concern under this guideline for the same reasons, as discussed above, in the guidelines governing the handling of protected information. Moreover, the improper completion of the equipment transfer form triggers a personal conduct security concern, as set forth in the aforementioned disqualifying conditions.

Applicant's misconduct occurred nearly three years ago. Also, he has acknowledged the behavior and, upon consulting his supervisor, altered his workload, focusing more on detail. AG ¶ 17(c), ". . . so much time has passed . . . that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment," and AG ¶ 17(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 the untrustworthy, unreliable, or other inappropriate behavior," apply.

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 the 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.

Both Applicant's current and former supervisors attest to Applicant's maturation since beginning the job, and strongly recommend that he be granted a clearance. In the nearly three years since Applicant's last security violation, he has thoroughly contemplated his problems with adhering to protocol involving protected information, and has identified the problem - taking on too many work assignments - and has addressed this problem with his supervisor. Applicant's stellar work performance, maturation, his efforts at rehabilitation, and the amount of time that has elapsed since the last security violation have persuaded me that he has mitigated the security concern.

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 K:	FOR APPLICANT
Subparagraphs 1.a - 1.e:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a - 2.b:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

MARC E. CURRY
Administrative Judge