



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



In the matter of:)	
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)	ISCR Case No. 14-00506
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

September 22, 2014

Decision

MOGUL, Martin H., Administrative Judge:

On March 21, 2014, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines J and E J for Applicant. 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) (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

On April 21, 2014, Applicant replied to the SOR (RSOR) in writing, and he requested a hearing before an Administrative Judge. The case was assigned to this Administrative Judge on May 12, 2014. DOHA issued a notice of hearing on June 12, 2014, and I convened the hearing as scheduled by video teleconference, on July 16, 2014. The Government offered Exhibits 1 through 3, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A and B, which were also admitted without objection. Two additional witnesses also testified on Applicant's behalf. The record was left open until July 30, 2014 to allow Applicant to submit additional evidence into the record. Applicant submitted additional documents,

which were identified as Exhibit C, D, and E and were also admitted without objection. DOHA received the transcript of the hearing (Tr) on August 1, 2014. Based upon a review of the pleadings, exhibits, and all the testimony, eligibility for access to classified information is denied.

Findings of Fact

After a complete and thorough review of the evidence in the record discussed above, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 33 years old. He has been married to his current wife since September 2, 2009, and he has one son. He was married to his previous wife from 2004 to 2007. He served in the United States Marine Corps (USMC) from January 2003 until April 2013, reaching the rank of Staff Sergeant, when he was involuntarily separated from military service. Applicant received two Bachelor of Arts degrees, one in Human Services and the other in Electricity and Electronics Technology. Applicant is employed by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

Paragraph 1 (Guideline J - Criminal Conduct)

1.a. The SOR alleges that Applicant has engaged in criminal conduct, which create doubt about a person's judgement, reliability, and trustworthiness. The specific allegation is that in approximately June 2011, Applicant, while in the USMC, altered his divorce decree so that he could continue to receive basic allowance for housing entitlements, for which he was not eligible. On April 3, 2012, he was convicted at a Special Court-Marital of violating the Uniform Code of Military Justice (UCMJ) Article 121 (Larceny) and Article 123 (Forgery), and was sentenced to a formal reprimand, 60 days confinement, and forfeiture of \$6,000. Applicant was later involuntarily separated from military service.

In his RSOR, Applicant admitted that he was involuntarily separated from military service, and initially issued the sentencing as described above, but ultimately he was not confined or ordered to pay a fine. During the hearing, Applicant testified that he knowingly altered the year of his final divorce decree from 2007 to 2009, misrepresenting to the USMC that he had been married for two more years than he was actually married. He testified that he considered whether or not to make the change to the document for approximately three months before he took action. He conceded that he was always aware that it was not appropriate or correct to make the changes he was contemplating, but he ultimately decided to change the documentation. (Tr at 26-29.) By Applicant's action of misrepresenting that he was legally married longer than he actually was, he was able to collect additional housing benefits than those to which he was legally entitled. Applicant stated that in late 2008, he received the divorce decree, showing that he was legally divorced. In 2011, he submitted the altered divorce decree to the military, because he had remarried and he had to show that his first marriage had ended. For three years, from 2008 to 2011, Applicant fraudulently failed to notify the USMC that he

was divorced in 2007. By this misrepresentation, he was able to receive between \$300 and \$400 a month more than the correct amount to which he was entitled. (Tr at 37-42.)

Applicant testified that it became apparent to the Installation Personnel Accountability Center (IPAC), the organization to which he submitted the documentation, that the document had been altered. He was confronted and ordered to speak with an investigator in June 2011, and he immediately admitted his guilt. Applicant claimed that because of his expeditious repair of his actions by paying back all the money that was overpaid, considered with his career prior to this incident, that he was able to enter a plea bargain so the confinement time was waived. Applicant repaid between \$14,000 and \$16,000 that had been overpaid based on the false information that he furnished to the Government, and his last payment was in October 2011. Applicant attempted to reenlist after his Court-Martial, but he was informed that he would not be allowed to reenlist. He was ultimately issued an Honorable Discharge in April 2013. (Tr at 30-32.)

Applicant testified that he believed this incident was not typical of his character or the rest of his career in the USMC. He averred that he has “learned an extensive amount as to character development following this incident,” and that this is “definitely a one-time instance.” (Tr at 53-54.)

Paragraph 2 (Guideline E- Personal Conduct)

2.a. The Government alleges in this paragraph that Applicant is ineligible for clearance because he engaged in conduct that exhibited questionable judgement, unreliability, unwillingness to comply with rules and regulations, and untrustworthiness. It is alleged in the SOR that Applicant’s conduct as alleged in paragraph 1, above, makes Guideline E applicable to this case.

In his RSOR, Applicant denied that he attempted to lie or cover up his Court-Martial. He further wrote that any appearance of dishonesty is because of an oversight or confusion during the investigation process.

Mitigation

Applicant testified and submitted a DD Form 214 to confirm that during his time in the USMC, Applicant received the Navy and Marine Corps Achievement Medal, three Marine Corps Good Conduct Medals, the Afghan Campaign Medal with one star and the Iraq Campaign Medal. While his DD Form 214 shows one star, Applicant stated that he actually did four deployments. (Exhibit A.) (Tr at 36.)

As stated above, two additional witnesses testified on behalf of Appellant. The first witness has known Applicant as Applicant’s direct supervisor since he began working with Applicant on February 17, 2014. He described Applicant as “dedicated,” “knowledgeable,” and “trustworthy.” This witness knew nothing about the concerns addressed in the SOR. (Tr at 63-66.) The second witness also works for the same company as Applicant in a management position. He has known Applicant since he started managing him in August 2013. He described Applicant as “very trustworthy,” and

someone he “would hire again.” The second witness also was unaware of the concerns addressed in the SOR. (Tr at 67-72.) Because neither witness was aware of Applicant’s conduct that is the subject of the SOR and the security clearance hearing, I find their testimony to have limited value

Applicant submitted several of his Commandant’s Guidance, his USMC evaluations. (Exhibit C.) Most of his ratings were in the “One of the many highly qualified professionals who form the majority of this grade,” but he also received evaluations of “One of the few exceptionally qualified Marines.” Applicant submitted a Certificate of Recognition that he received in May 2014, in his current employment, for his outstanding productivity and dedication. (Exhibit D.) Finally, Applicant submitted a letter from a captain in the USMC, who was Applicant’s direct supervisor, dated July 16, 2014. The captain was extremely laudatory of Applicant’s Marine service, and he believed that Applicant has learned from his previous conduct, and “has the capacity to serve any role that is afforded to him.” (Exhibit E.)

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 useful 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s over-arching 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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

Paragraph 1 (Guideline J - Criminal Conduct)

The Government has established that Applicant engaged in criminal conduct that occurred during a three year period, from 2008 through 2011, when Applicant’s actions of knowingly submitting false documents to the USMC for financial gain were discovered. Especially significant is that Applicant admitted he considered whether or not to commit the forgery for three months before he did it, and he only stopped his conduct after it was discovered. Among the disqualifying conditions, I find that ¶ 31(a), “a single serious crime or multiple lesser offenses,” applies in this case. ¶ 31(c), “allegations or admissions of criminal conduct, regardless of whether the person was formally charged,” is also applicable to this case.

While Applicant’s remorse appears sincere, because of the recency, duration, and wilfulness of the conduct, and the fact that Applicant only stopped the conduct after his actions were discovered, I cannot find that any mitigating conditions under ¶ 32 are applicable. I find Paragraph 1 Guideline J, Criminal Conduct, against Applicant.

Paragraph 2 (Guideline E - Personal Conduct)

With respect to Personal Conduct, the Government relies heavily on the honesty and integrity of individuals seeking access to our nation’s secrets. If such an individual intentionally falsifies material facts or fails to furnish relevant information to the Government, it is extremely difficult to conclude that he nevertheless possesses the judgment, and honesty necessary for an individual given a clearance.

In this case the evidence clearly establishes that Appellant knowingly furnished untruthful information to the USMC for unearned and unjustified financial gain. In reviewing the disqualifying conditions under Personal Conduct ¶16, I conclude that ¶ 16(a) applies because of Applicant’s “deliberate omission, . . . of relevant facts from any . . . personnel security questionnaire . . . , or similar form used to determine employment qualifications, award benefits or status.” I do not find that any mitigating condition is applicable under ¶17. Applicant’s conduct, considered as a whole, exhibits questionable

judgement, lack of candor, dishonesty and unwillingness to comply with rules and regulations. I, therefore, resolve Paragraph 2 Guideline E, Personal Conduct, against Applicant.

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.

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. Based on all of the reasons cited above as to why the disqualifying conditions are applicable and why the mitigating conditions do not apply under both guidelines alleged, I find that the record evidence leaves me with significant questions and doubts as to Applicant's eligibility and suitability for a security clearance under the whole-person concept. For all these reasons, I conclude Applicant has not mitigated the security concerns under the whole-person concept.

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 J:	AGAINST APPLICANT
Subparagraph 1.a.:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a.:	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.

Martin H. Mogul
Administrative Judge