



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



In the matter of:)	
)	
)	ISCR Case No. 07-00474
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

January 30, 2009

Decision

METZ, John Grattan, Jr., Administrative Judge:

On 31 March 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline E.¹ Applicant answered the SOR 28 April 2008, and requested a hearing. DOHA assigned the case to me 2 October 2008, and I convened a hearing 30 October 2008. DOHA received the transcript (Tr.) 6 November 2008.

¹DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (RAG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Findings of Fact

Applicant admitted the SOR allegations of 1.c., 1.d., 1.e., and 1.f. He denied the remaining allegations. He is a 46-year-old copper technician employed by a defense contractor since January 2005. He appears to have been investigated for a clearance while in the military in 1992.

In January 1994, Applicant was honorably discharged from the U.S. military for a pattern of misconduct. Between June 1992 and October 1993, Applicant was cited for misconduct eight separate times by six different military supervisors. The most serious of the incidents—and the direct precipitant of the administrative separation—were domestic assaults against his spouse in March 1993 and October 1993. However, the other incidents also provide insight into the issues highlighted in the SOR (G.E. 7). In June 1992, he was cited for failure to follow instructions. In August 1992, he was late to work. March 1993 was the first domestic violence incident, in which Applicant and his wife got involved in an altercation over their 10-week-old baby. Later in March 1993, he was cited for misusing a government vehicle. In April 1993, he received performance counseling that noted his “argumentative . . . me attitude.” May 1993 performance counseling noted that his “personal feelings surface in an unprofessional manner.” August 1993 performance counseling reported that he “[had] a habit of doing things that are for you and not anyone else” and demonstrating an “all me attitude.” In each instance, he was not recommended for promotion to paygrade E-5.

Appellant’s conduct while in the military established the pattern he later exhibited in his private-sector employment from 1994 to 2004. In October 1996, he quit his job with a defense contractor following allegations of time card fraud. In October 1998, he was fired from his job as a consulting engineer for the defense in a lawsuit when he began dating one of the plaintiffs while the case was still pending. He later married her. In January 2002, he quit his job following allegations of aggressive behavior against a co-worker. In April 2003, he was fired from his job with a defense contractor for misusing government computers, specifically accessing pornographic websites. Finally, in June 2004, he was fired from his job for making unacceptable comments to female staffers of the company’s client, and for ignoring client requests about working on the client’s equipment.

Applicant attributes these incidents to his zeal for accomplishing his employer’s goals and the resistance he perceived from co-workers or supervisors that were not as competent or dedicated as himself. In no instance does he consider any portion of his behavior or conduct to have contributed to the incidents recorded against him.

Applicant is alleged to have falsified his December 2004 clearance application by failing to disclose his June 2004 firing. He is also alleged to have falsely stated the reason he quit his job in October 1996 to an investigator during a subject interview in August 2007.

Regarding his clearance application, Applicant disclosed his April 2003 firing and his October 1998 firing. The government's evidence concerning his June 2004 firing (G.E. 14) suggests that Applicant was dismissed by the company in part for the misconduct reported by a company client in June 2004. However, that evidence does not state that Applicant was informed of those reasons at the time of his dismissal. Applicant's August 2007 sworn statement (G.E. 8) that he was told that his services were no longer needed and given no specific reason for his termination is not rebutted elsewhere in the record. His sworn statement that he later had a telephone conversation with the company that revealed the alleged misconduct to him does not establish that he had that conversation with the company before he completed his clearance application in December 2004.

Regarding the allegation that he misstated the reason he left his job in October 1996 in his August 2007 sworn statement, the fact that he did not characterize his departure with the language preferred by the government does not, of itself, establish a falsification. He stated in part, "I was recorded piggybacking into the facility behind another employee. I did not use my own badge on that occasion" That statement reasonably infers time card fraud. Further, Applicant was interviewed under oath in August 2006 (G.E. 10), during which he provided a more detailed description of "piggybacking" and disclosed that he had been questioned about his hours worked during a meeting with his supervisor that precipitated his decision to leave his job. He provided essentially the same information in an unsworn declaration made in September 2002 (G.E. 11). The government investigator recorded Applicant revealing allegations of falsifying his time card. The undisputed facts are that Applicant left this job in October 1996 and that even if I concluded that his departure was under adverse circumstances he was not required to disclose this on his clearance application, as it was more than seven years before he completed his application in December 2004. Given his substantial disclosure of the circumstances of his departure in September 2002 and August 2006, and his description of "piggybacking" in August 2007, the government could not have been misled and any allegation to the contrary is based on a quibble over word choice.

Applicant's current employer considers him an excellent employee, and believes he can be trusted with classified information. His life-long friends also consider him reliable and trustworthy. Applicant claims to be more settled now and correctly notes that he has had no further incidents since he was fired in June 2004.

Policies

The Revised Adjudicative Guidelines (RAG) list factors to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in RAG ¶ 2(a). The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed where a

case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guideline is Guideline E (Personal Conduct).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against granting access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.²

Analysis

The government established a case for disqualification under Guideline E, and Applicant did not mitigate the security concerns, except regarding the falsification allegations. Although I do not consider Applicant to be a particularly persuasive witness, he denied the falsification allegations, shifting the burden to the government to establish both that the answers given were false and were deliberately false. The government's evidence on these points, including recorded statements by Applicant—both sworn and unsworn—adequately disclosed the circumstances of these incidents when required to do so. Differences in characterization of actions do not amount to falsification where the underlying facts are disclosed.

However, Applicant's employment adventures raise serious security concerns. Distilled to its essence, Applicant's misconduct—whether relatively minor (being late to work) or more serious (domestic violence)—demonstrates a consistent pattern of poor judgment. He has been unable or unwilling to follow basic norms of behavior in society or common sense requirements in the workplace. Compounding these examples of poor judgment is his inability or unwillingness to see that these incidents demonstrate poor judgment—in itself a demonstration of poor judgment or poor perception.³ In his

²See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

³¶ 16.(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

mind, none of these incidents are really his fault, even partially. It may be that one or more of these incidents were due to petty jealousies or co-worker/supervisor incompetence. But when an individual is cited for military misconduct eight times within an 18-month period (by six different supervisors), is discharged for that misconduct, and leaves employment under adverse circumstances five times in eight years, the credibility of such claims diminishes. Further, Applicant was over 29 years old when this misconduct began, hardly an age where the conduct might be attributed to youthful immaturity.

Although this case is alleged under Guideline E, it is really all about a whole person analysis. Despite the recommendation of his employer and the fact that Applicant has not had any recorded incidents since June 2004, his ongoing inability or unwillingness to see how his conduct demonstrates poor judgment augurs against a whole person analysis in Applicant's favor. I resolve Guideline E against Applicant.

Formal Findings

Paragraph 1. Guideline E: AGAINST APPLICANT

Subparagraph a:	Against Applicant
Subparagraph b:	Against Applicant
Subparagraph c:	Against Applicant
Subparagraph d:	Against Applicant
Subparagraph e:	Against Applicant
Subparagraph f:	Against Applicant
Subparagraph g:	For Applicant
Subparagraph h:	For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance denied.

JOHN GRATTAN METZ, JR
Administrative Judge

safeguard protected information; (d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information 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. . . ;