



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



In the matter of:

SSN: -----

Applicant for Security Clearance

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ISCR Case No. 07-06212

Appearances

For Government: D. Michael Lyles, Esquire, Department Counsel
For Applicant: *Pro Se*

May 14, 2008

Decision

CURRY, Marc E., Administrative Judge:

On, August 15, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing a Guideline E, personal conduct security concern. 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on September 7, 2007, admitted the allegations, and requested an administrative determination. On October 29, 2007, department counsel prepared a File of Relevant Material (FORM). Applicant received it on October 30, 2007, and did not reply. The case was assigned to me on May 2, 2008. I have reviewed the FORM, and have concluded that eligibility for access to classified information is granted.

Findings of Fact

Applicant is a 44-year-old married man with four children, ranging in age from six to 17. He earned a bachelor of science degree in computer and information sciences in 1989. He is a private investigator and owns a limousine service. He is seeking to work for a defense contractor as a background investigator.

From April 1985 to February 2004, Applicant was a police officer. During that time, he received a combination of 15 departmental awards and certificates for outstanding work (Item 2 at 2).

From 1990 to 2006, Applicant operated a part-time business that among other things placed police officers in part-time security guard positions at a local automobile dealership. (Item 5 at 4). Under his agreement with the dealership, Applicant recruited police officers to work at the dealership, screened them, and managed the security guard payroll (Item 4 at 34).

In January 2003, a police officer who had used Applicant's services filed a complaint with the police department's internal affairs division (IAD) accusing Applicant of improperly retaining a percentage of his security guard salary. According to state regulations, police officers who operated security guard placement companies could retain as commission part of the salary of anyone they place so long as their companies were licensed. Applicant's company was not licensed (Item 5 at 4). He was unaware of the licensing requirement (*Id.*).

The IAD also investigated Applicant for using a subordinate to sign his leave slips instead of his supervisor, and mishandling of evidence¹ (Item 5 at 4). During the course of the investigation, administrative charges were filed against Applicant (*Id.*). While the investigation was pending, the auto dealership offered him a full-time position as its security manager. He accepted the position in January 2004, quit his job with the police department, and worked at the auto dealership for slightly more than two years (Item 4 at 14). He did not resign from the police department under an agreement (Item 4 at 34).

Applicant has never seen a copy of the IAD file (Item 2 at 1), and it is not included in the record evidence. All of the record information regarding the circumstances of Applicant's police department resignation stems from his security clearance application disclosure, and his later discussion with an investigative agent.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list

¹Applicant allegedly failed to place some license plates in a the department's evidence locker.

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, they are applied together with the factors listed in the adjudicative process. According to AG ¶ 2(c), the entire process is a 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, 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.

Analysis

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." Here, Applicant's SOR admissions establish the government's allegation that he left his job as a police officer in 2004 while under investigation for operation of a job placement business without a license, erroneous leave slip execution, and failure to place evidence in an evidence locker.

No record evidence indicates that Applicant's operation of his business without the proper license was anything more than an administrative oversight. A police officer who obtained a job as a part-time security guard with the help of Applicant's placement company alleged that he improperly retained part of his hourly security guard salary. Upon reviewing the record evidence, I conclude Applicant did nothing improper by retaining part of the contract security guard's salary for placing him. Instead, he erred in failing to obtain a license for his job placement service.

Applicant's contention that he was unaware of the licensing requirement was not challenged in the record. Also, the government's entire case rests on information he voluntarily disclosed. Under these circumstances, I conclude his contention was credible.

Applicant's failure to submit leave requests properly has limited probative value in assessing his security clearance worthiness absent any evidence regarding the

frequency of the conduct or the circumstances under which it occurred. Similarly, no evidence exists to assess the seriousness of Applicant's failure to store the license plates in the department's evidence locker. This oversight also has limited probative value. I conclude Applicant's erroneous leave slip execution and failure to place evidence in the department's evidence locker were minor administrative errors.

Before the IAD investigation, Applicant's career as a police officer was exemplary. There is no evidence of misconduct either before or after the investigation. Consequently, although Applicant's mistakes constitute a pattern of misconduct, they are not sufficient enough when combined with all of the available information to support a whole-person assessment of questionable judgment or untrustworthiness under AG ¶¶ 16(c) and 16(d), as the government alleges. Applicant has mitigated the personal conduct security concern.

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), as follows:

(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) 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.

I addressed the whole person factors in the Personal Conduct section of the decision. Upon considering these factors, I conclude Applicant 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 E:	FOR APPLICANT
Subparagraphs 1.a - 1b:	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