



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 07-15344
)
)
Applicant for Security Clearance)

For Government: Braden Murphy, Esquire, Department Counsel
For Applicant: *Pro Se*

June 30, 2008

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

On November 18, 2005, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On August 11, 2006, he submitted a Security Clearance Application (SF 86). On March 5, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline E (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 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 in writing on March 20, 2008, and requested a hearing before an administrative judge. On May 8, 2008, DOHA assigned the case to me. A Notice of Hearing was issued on May 7, 2008, and the case was heard on May 30, 2008, as scheduled. Department Counsel offered Exhibits (GE) 1 through 7 into evidence without objection. Applicant testified and offered Exhibits (AE) A through H into evidence without objection. DOHA received the hearing transcript (Tr.) on June 11, 2008.

Findings of Fact

In his Answer to the SOR, Applicant admitted all factual allegations contained in ¶¶ 1.a through 1.c of the SOR. Those admissions are incorporated into the following findings of fact:

Applicant is 39 years old and single. He earned a Bachelor of Science in Accounting and a Bachelor of Science in Finance. In January 1994, he enlisted in the U.S. Air Force and served until August 2002 when he received an honorable discharge. He was a Sergeant (E-4) when he was discharged. While in the Air Force, he had a Top Secret clearance and access to classified information as a computer specialist. He comes from a family with a history of military service. His father was in the Marine Corps for 20 years, one of his four brothers recently retired from the Air Force, and another brother is in the Air Force reserves. (Tr. 50).

After his discharge from the Air Force in 2002, Applicant worked for a federal contractor until October 2004. He was a communications center operator with access to a classified internet, essentially performing the same duties he did when on active duty. In November 2004, he began a position with his current employer, a defense contractor. From October 2005 to December 2006, he held a second full-time computer position, working for another defense contractor. (Tr. 21-22, 45, 57).

During Applicant's 14-year career with the government, he has held a security clearance. In December 1994, he was granted a Top Secret security clearance, and in April 2001, he was granted access to Sensitive Compartmented Information (SCI). In 2006, he received a work-related polygraph. (Tr. 24). There is no evidence of any incidents indicating breaches of security policies or other violations.

In 2001, Applicant placed a personal advertisement on the internet. He subsequently met a woman with whom he had a long-distance internet relationship until February 2008. (Tr. 27-28). He never met her in person and in 2002, she wanted to become engaged and he agreed. (Tr. 40). Over the course of the years, he asked to visit her on occasion, but she refused. They interacted by daily email and phone calls, but never met in person. He considered her to be his friend. (Tr. 27). He "loved her," but sometimes was distressed with the long distant relationship. (Tr. 46). He told his friends about the relationship and they advised him to terminate it. At times, he considered the possibility that the situation was a "scam," but believed she was a good person. (Tr. 41-42).

After communicating for about six months, the woman began asking Applicant for money. From 2001 until October 2005, Applicant sent her \$500-\$800 per month. (Tr. 37). After he began working two jobs in October 2005, he earned \$132,000 annually, and sent her \$2,000 per month. (Tr. 55). He continued depositing that amount into her bank account until December 2006 when he left his second job. Thereafter, he sent her what he could afford. (Tr. 31). Applicant asserted that he could afford to give her money and never experienced financial problems as a result of doing so. He listed her as a dependent on his 2005 income tax return because she did not work and he was her sole source of income. He acknowledged that it was a mistake to do that. (Tr. 30). The last time he sent her money was in January 2008. (Tr. 44).

Applicant lost his Top Secret clearance and access to SCI as a result of the relationship. In November 2006, the National Security Agency denied Applicant access to sensitive compartmented information (SCI), noting in its Clearance Decision Statement that: “[Applicant] was being considered for access to some of the most sensitive and perishable information in the U.S. government. Yet his conduct with [the woman] raises considerable doubt relative to his character, judgment, discretion, trustworthiness and reliability.” (GE 5). As a result, he left his second job at the end of December 2006 or early January 2007. (Tr. 45). The following year, in January 2008, he lost his primary position after his Top Secret clearance was revoked, pending the outcome of this proceeding.

Applicant admitted that the reason he terminated the relationship in February 2008 was because he lost his job. (Tr. 34-35). He realizes that he may lose his job permanently as a result of his involvement with the woman. He insisted that he never did anything to jeopardize classified information while in the relationship. (Tr. 33). He told the woman that he worked for the government, but not the nature of his work.

While testifying, Applicant expressed great sadness and grief over the loss of his relationship. He is currently unemployed and attending college. (Tr. 23). In addition to the stress of being without a job, he came to realize that he “needed to move on” with his life. (Tr. 29). He has not sought any form of counseling or grief therapy to assist him in managing his disappointment and understanding the underlying dynamics of the long-distance relationship. He believes he is “fine.” (Tr. 48). He is attempting to rebuild his life. (Tr. 52).

Applicant submitted letters of recommendation from his most current supervisor, his former manager from his second job, and a program director with whom Applicant worked from August 2002 to October 2004. All of them consider Applicant to be professional, competent and ethical. (AE A).

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 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 common sense 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 to obtain a favorable security decision. 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."

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.

Analysis

Guideline E, Personal Conduct

AG ¶ 15 expresses the Government's security concern pertaining to personal conduct:

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 several conditions that could raise a security concern, two of which may be specifically disqualifying in this case:

(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; and,

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

In November 2006, Applicant lost access to SCI and his second job. After an investigation the National Security Agency determined that he did not meet the standards for access to SCI because of his long-term relationship with a woman he never met and whom he intended to remain in contact. Despite that decision and notice that the Government had security concerns about him, Applicant stayed in the relationship and continued to send money to her for the next year, raising further questions about his judgment in personal matters. Based on that evidence, the Government raised 16(d). Although Applicant disclosed his long-term, long-distance internet relationship to his family, friends, and supervisors, he maintained the relationship after he lost his second job. Because his unorthodox relationship could be construed as embarrassing, it could also affect his standing in the community and provide an opportunity for exploitation in the future. The Government established 16(e).

After the Government raised a disqualification, the burden shifted to Applicant to provide evidence to rebut or mitigate it. AG ¶ 17 provides conditions that could mitigate security concerns: The following three have potential applicability to the facts:

(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;

Applicant had a relationship with someone he never met, but chose to support. His decision to engage in questionable behavior for seven years and under such circumstances is not minor and raises questions about his judgment. Hence, 17(c) does not apply. Although he acknowledges his behavior and the problems it presented, he did not obtain counseling or demonstrate that he has taken steps to understand or alleviate the circumstances that underlie seven years of exercising questionable judgment. Without such evidence, similar behaviors may recur and 17(d) is not applicable. Applicant asserted that he terminated his long-distance relationship three months before the hearing. That evidence, alone, is not sufficient to warrant the full application of 17(e) in view of the length of time he participated in the relationship.

“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). They include the following:

(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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must include an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered all the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, including the many positive aspects in Applicant's life. He is a 39-year-old man, who honorably served his country for eight

years in the Air Force, during which time he held a Top-Secret clearance. After leaving military service, he began employment with a federal contractor and continued successfully supporting the Government, while maintaining a Top Secret security clearance and access to SCI for several more years. He is intelligent, honest and hardworking; he has maintained two important full-time positions for more than a year.

I also considered a seven-year “blind spot” in Applicant’s life. From 2001 to 2008, he maintained a relationship with a woman whom he considered to be his fiancée, but never met. He provided her substantial financial support and believed he was legally authorized to claim her as a tax exemption. He desired a conventional marriage, but she deterred him with serial excuses for not meeting him. Even after this relationship cost him his second job, he persisted in communicating and sending her money for another year. Unfortunately, the relationship demonstrates an on-going pattern of poor judgment in matters of personal significance. In spite of the anguish that this situation has brought to his life, he offered limited insight into his behavior and adamantly refused professional counseling, which could provide understanding of the relationship and bring meaningful closure. Without such assistance, similar incidents could arise and create further security concerns.

Overall, the record evidence leaves me with questions as to Applicant’s eligibility and suitability for a security clearance at this time. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under personal conduct.

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
Subparagraphs 1.a through 1.c:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly not consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

SHARI DAM
Administrative Judge