



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-17661
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Robert E. Coacher, Department Counsel
For Applicant: *Pro Se*

July 30, 2009

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Security Clearance Application (SF-86) on July 6, 2005. (Government Exhibit 4). On March 12, 2009, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on March 27, 2009, in which he elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on May 1, 2009. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on May 8, 2009, and he submitted a timely reply. The case was assigned to the

undersigned for resolution on June 16, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

FINDINGS OF FACT

The Applicant is 36 years old and married. He has a Bachelor's of Science Degree in Electrical Engineering. He is employed by a defense contractor as a Senior Systems Engineer, and is applying for a security clearance in connection with his employment.

The Government opposes the Applicant's request for a security clearance, on the basis of allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR:

Paragraph 1 (Guideline E - Personal Conduct). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he engaged in conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that raise questions about his ability to protect classified information.

The Applicant admits to each of the allegations set forth in the SOR under this guideline. In 1996, while employed as a police officer, and working undercover as a detective in a multi-jurisdictional narcotics task force, the Applicant took part in a raid of a "meth" house, where methamphetamine was being produced. While searching the house, the Applicant found a large amount of money and a softball size amount of methamphetamine wrapped in aluminum foil and turned it over to the proper authorities. The Applicant was then approached by two other officers in his unit who suggested that they collect a "trophy" from the raid. (A trophy is an item of personal property of minor value from a raid, taken as a keepsake of the bust). The Applicant improperly took some items of personal property from the meth house. As a result of this misconduct, he became the subject of a police corruption investigation conducted by the FBI. Applicant pled guilty to a misdemeanor offense of 18 USC Section 242, for deprivation of civil rights. He received a four month home confinement along with three years probation.

Applicant successfully completed the sentencing requirements imposed by the court, and voluntarily resigned from the police department. Applicant's probation officer suggested that, in his opinion, because of the Applicant's character and actions the Applicant would be a good candidate for a Presidential Pardon. After contacting an attorney regarding the matter, Applicant decided not to pursue it when he learned that it could cost between \$7,000.00 and \$10,000.00 to do so.

Applicant explained that although his misconduct is not excused, when the incident occurred, he had been working as a full time police officer for eight months. He

was 24 years old, young, and from a small town police department. He wanted to fit in with the task force, and as a junior member just went along with what he was told. Applicant stated, "My time in the unit can be summarized by a state of constant fear. Here I was a 24 year old Officer who had joined the Police force to help others, but now am in a state of constant fear and distrust from those that I immediately work with and in fear for my life from those I was trying to work cases on." (Applicant's Response to the FORM, attachment 1). Applicant was naive and did not have the maturity level required to do the job properly.

The Applicant indicates that since then, thirteen years has passed and he has matured and changed his life around for the better. He has learned from his mistakes of the past. He returned to school, obtained his Bachelor's of Science in Electrical Engineering degree, embraced his religion by volunteering at his church, and has become a different person than he was before. (Applicant's Response to the FORM, attachment 1).

Among many church related volunteer services the Applicant has been involved in being a role model for a family with three children with an absentee father. He has taught one of the children to play baseball, attends their sporting events and provides general support. (Applicant's Response to the FORM, attachment 1).

Numerous letters of recommendation from friends, coworkers and professional colleagues who have known the Applicant for many years and/or see him on a daily basis indicate that the Applicant is an honest, conscientious, compassionate, hardworking, dependable and reliable individual. He demonstrates good judgment and high ethical and moral standards in all aspects of his life. He is loyal, highly patriotic and a man of honor and integrity. His technical expertise at work is a true asset to the organization. He is highly recommended for a position of trust. (Applicant's Response to the FORM, attachment 2).

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guidelines. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Guideline E (Personal Conduct)

15. *The Concern.* 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.

Conditions that could raise a security concern:

16.(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. This includes but is not limited to consideration of: . . . (3) a pattern of dishonesty or rule violations; and (4) evidence of significant misuse of Government or other employer's time or resources;

16.(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 may service as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

Condition that could mitigate security concerns:

17.(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;

17.(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

17.(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature, extent, and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The extent to which participation was voluntary
- f. The presence or absence of rehabilitation and other permanent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

The Government must make out a case under Guideline E (Personal Conduct) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSION

Having considered the evidence in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR, and that Applicant's personal conduct has a direct and negative impact on his suitability for access to classified information.

The evidence shows that thirteen years ago, the Applicant was placed in a special position of trust, that of an undercover police officer, and he intentionally violated the position by engaging in corrupt activities. There is absolutely no excuse for his misconduct of the past. His actions were investigated by the FBI and he was formally charged, convicted and sentenced for deprivation of civil rights. The Applicant states that he is not the same person that he was thirteen years ago. Since then, he has greatly mature and changed his life around. He has finished college, joined the church, realizes right from wrong and has corrected his mistakes of his past. He is a person of honesty, integrity and trustworthiness and he is not intimidated by anyone. He has had no further encounters with law enforcement. He is extremely remorseful for his misconduct of the past. He states that he has learned a harsh lesson from this experience and understands that the serious ramifications of any misconduct and that the Government will not tolerate any dishonesty while holding a security clearance.

Under Guideline E, Disqualifying Conditions 16.(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. This includes but is not limited to consideration of: . . . (3) a pattern of dishonesty or rule violations, (4) evidence of significant misuse of Government or other employer's time or resources and 16.(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 apply. However, Mitigating Conditions 17.(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, 17.(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress and 17.(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations also apply.

I have also considered the "whole person concept" in evaluating the Applicant's eligibility for access to classified information. His heartfelt letter about himself as well as his numerous favourable references, have also been considered. Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole, support a whole person assessment of good judgement, trustworthiness, reliability, and a willingness to comply with rules and regulations, and/or other characteristics indicating that the person may properly safeguard classified information.

Considering all of the evidence presented, the Applicant has mitigated the negative effects of his past poor personal conduct and the impact that it can have on his ability to safeguard classified information. On balance, it is concluded that the Applicant has overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the SOR.

FORMAL FINDINGS

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.
Subparagraph 1.a.: For the Applicant
Subparagraph 1.b.: For the Applicant

DECISION

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge

