



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-18525
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Department Counsel
For Applicant: *Pro Se*

November 25, 2008

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on September 14, 2006. (Government Exhibit 1). On July 24, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline E 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), 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 August 28, 2008, and requested a hearing before an Administrative Judge. This Administrative Judge was assigned the matter on September 12, 2008. A notice of hearing was issued on September 23, 2008, scheduling the hearing for November 6, 2008. The Government offered two exhibits referred to as Government Exhibits 1 and 2, which were received without objection. Applicant testified on his own behalf and submitted eight exhibits, referred to as Applicant's Exhibits A through H. DOHA received the transcript of the hearing (Tr.) on November 17, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

The Applicant is 29 years old and has attended junior college and received a Certification for Microsoft System Engineer. He is seeking employment by a defense contractor as a Linguist, and is applying for a Top security clearance in connection with his employment.

Paragraph 1 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because of his 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.

The Applicant admitted each of the allegations set forth in the SOR with some conditions.

The Applicant's family came to the United States in November 1993. The Applicant became a naturalized United States citizen in March 2000. He speaks Arabic and Farsi. He was employed as a Linguist at GITMO from May 31, 2004 through April 17, 2006. During this period, he received three separate complaints for misconduct. (Government Exhibit 2).

Applicant explained that there were two subcontractors that provided translation services. An employee of another subcontractor wanted his brother to visit him at GITMO. In order to have a visitor at GITMO, the visitor had to be sponsored by an employee which required a background investigation of the visitor. The employee's company did not allow their employees to sponsor anyone, so the Applicant asked his supervisor if he could sponsor the individual as a favor to the employee of the other company. Applicant's supervisor told him that this was a conflict of interest between the two companies and was annoyed by the Applicant's request. Applicant states that he did not submit any documentation to sponsor the person, and does not understand why his supervisor and project manager were so upset. Applicant received a written warning on or about February 16, 2006 from his employer for attempting to sponsor an unauthorized person into GITMO. Applicant does not remember receiving a written warning for this. (Government Exhibit 2)

In May 2004, the Applicant received a verbal warning and counseling from his employer for accessing inappropriate pornographic web sites on his government computer and for over reporting the hours he purportedly worked. The Applicant initially denied ever accessing pornographic websites because it is known that they are blocked. Applicant eventually admitted to viewing pornographic material by accessing several websites and receiving e-mail from someone that contained a power point pornographic presentation of naked women. (Government Exhibit 2).

The Applicant testified that while delivering something to another location, he apparently dropped his security badges (two security badges attached together) while exiting his vehicle. Applicant filed a police report with the proper authorities regarding this loss. A soldier found the identification and returned them to the Applicant. In

December 2004, the Applicant received a written warning from his employer for losing the two security badges. (Applicant's Exhibit A and Government Exhibit 2)

Applicant believes that his supervisor and project manager are responsible for these complaints and that they were not warranted. He believes that they were threatened by his linguistic abilities and they did not have the same capabilities. (Tr. p 43- 44). He never received any complaints from the military, his customer.

Letters of recommendation submitted by high ranking military officers, co-workers and friends attest to the Applicant's talent, tireless work ethic, integrity, diligence and professionalism as a Linguist and his contributions to the national security. (Applicant's Exhibits B, C, D, E, and F).

Applicant's performance appraisals for 2004 and 2005 reflect ratings of average and above average. (Applicant's Exhibit G).

Applicant received three certificates of appreciation from the Joint Task Force GITMO reflect Applicant's meritorious service to the United States military mission. (Applicant's Exhibit H)

POLICIES

Enclosure 2 and Section E.2.2. of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

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:

16.(d)(2) disruptive, violent or inappropriate behavior in the workplace;

16.(d)(3) pattern of dishonesty or rule violations.

Conditions that could mitigate security concerns:

None.

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 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 voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent 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 an acceptable security risk. 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."

CONCLUSIONS

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for clearance may be involved in rule violations that demonstrates poor judgment or unreliability.

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him a security clearance.

In this case the Government has met its initial burden of proving that the Applicant has engaged in poor personal conduct (Guideline E). The totality of this evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant. Because of the scope and nature of the Applicant's conduct, I conclude there is a nexus or connection with his security clearance eligibility.

Considering all of the evidence, the Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case under Guideline E of the SOR.

The evidence shows that between May 2004 through February 2006, the Applicant engaged in three different incidents of misconduct that demonstrates a pattern of poor judgment under Guideline E, (Personal Conduct). This pattern is fairly recent and very troubling. Although he never received any complaints from the military concerning his linguistic skills, he must still follow the rules and regulations required by his company, which he did not do. In addition, he was not entirely candid or forthcoming in admitting the misconduct regarding his pornographic viewing, and cannot be considered honest or trustworthy. 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: 16(d)(2) disruptive, violent or inappropriate behavior in the workplace, and 16(d)(3) a pattern of dishonesty or rule violations* also apply. None of the mitigating conditions are applicable. Consequently, his poor judgment adversely effects his security clearance eligibility.

I have also considered the "whole person concept" in evaluating the Applicant's eligibility for access to classified information. The Applicant is 29 years old, but has conducted himself in a very immature and irresponsible manner. 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 questionable judgement, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard classified information.

This Applicant has not demonstrated that he is trustworthy, and does not meet the eligibility requirements for access to classified information. Accordingly, I find against the Applicant under Guideline E (Personal Conduct).

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against 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: Against the Applicant.
- Subpara. 1.a.: Against the Applicant.
- Subpara. 1.b.: Against the Applicant.
- Subpara. 1.c.: Against the Applicant.

DECISION

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 the Applicant.

Darlene Lokey Anderson
Administrative Judge