



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



In the matter of:)
)
-----) ISCR Case No. 08-00156
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Caroline H. Jeffreys, Esquire, Department Counsel
For Applicant: *Pro Se*

December 18, 2009

Decision

HOWE, Philip S., Administrative Judge:

On February 6, 2007, Applicant submitted his electronic version of the Security Clearance Application (SF 86) (e-QIP). On August 21, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to 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 September 2, 2009. Applicant requested his case be decided on the written record in lieu of a hearing.

On October 8, 2009, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant on October 9, 2009. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on October 15, 2009.

Applicant filed a Response to the FORM on November 6, 2009 within the 30 day time allowed that would have expired on November 14, 2009. He submitted documents including two employee evaluations, many customer comment forms, and four character letters. The Department Counsel objected to these documents. I overruled the objection and admitted the documents under the general category labeled "Response."

I received the case assignment on November 16, 2009. Based upon a review of the complete case file, pleadings, and exhibits, eligibility for access to classified information is denied

Findings of Fact

Applicant admitted all allegations in Paragraph 1 of the SOR, except Paragraph 1.b which he partially admitted and partially denied. I considered it denied for the purposes of this decision.

Applicant is 48 years old, married and divorced twice. He has one child. He works for a defense contractor and has since January 2007. (Items 5, 6, Response)

Applicant worked for a non-appropriated fund at an air base from 1998 to March 2002. He was terminated from that position after making statements in the workplace regarded by his supervisors as threatening comments. He failed to attend some mandatory training, and when questioned about this lack of attendance, he became "seriously agitated and said (he) was going to go on a killing spree." He was escorted off the air base, and his employment later terminated in March 2002. (Items 5, 7)

In September 2005, Applicant worked for a charitable institution which operates stores selling used clothing and other merchandise to customers. He was a store manager. His employer terminated him then for the use of profane, abusive or threatening language he directed toward fellow employees, customers, guests or supervisors. Applicant was warned about his type of behavior in a letter from his supervisor dated August 31, 2005. (Items 5, 7, 9, 10)

Applicant was terminated by another employer, a facility service provider, in April 2006 for testing positive for marijuana in his initial urine test conducted by his employer. Applicant worked for that company four days before being terminated. He did not list this employer in his SF-86 in response to Question 11 (Employment Activities). Applicant also failed to list his termination by the same employer in response to

Question 22 (Employment Record). Applicant did list his terminations by the two other employers who fired him in 2002 and 2005. (Items 5, 7, 8)

Applicant admitted in two statements he smoked marijuana from 1977 when he was in high school until April 2006. He considered it self-medication and a relaxant. Applicant also listed family deaths, the shooting of a friend, and a variety of personal medical problems as the explanation for his behavior. He claims he will not use illegal drugs in the future. (Items 6, 7)

Applicant admitted in his October 2008 statement to a government investigator he was terminated by a collegiate baseball umpire association for whom he worked. His termination occurred in June 2006 after he failed to return phone calls from your employer seeking an umpire for a game. Applicant admitted he did not return the telephone calls because he had enough work to do. Then he stated he was rehired by the umpire association in October 2008. However, Applicant submitted in November 2009 as part of his Response a statement from the collegiate umpire association associate booking agent, dated November 4, 2009, stating Applicant took a leave of absence for a year and then another year from the umpire association. This booking agent states Applicant was never terminated by the association. In his November 6, 2009, Response Applicant admits he was suspended from the association for failure to return the phone calls from his employer. He also claims he was too busy to work in 2007 and 2008, but he claims he was reinstated in 2009. I find Applicant's October 2008 statement to be more credible, and that he was terminated by the umpire association. (Items 5, 7, Response)

Applicant submitted many pages of email customer surveys and messages praising him for his work on a computer help desk for his current employer. His two employee evaluations dated January 2008 and January 2009, showing he meets expectations as an overall assessment. His character statements praise his umpiring skills and that he is detail oriented in his work. (Response)

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, the administrative judge applies the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense 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.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security decision.”

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.

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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline E, Personal Conduct

AG ¶ 15 expresses the 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.

The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, and cooperation with medical or psychological evaluation; and,

(b) refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I have specifically considered:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

(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:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information:

(2) disruptive, violent, or other inappropriate behavior in the workplace;

(3) a pattern of dishonesty or rule violations; and,

(4) evidence of significant misuse of Government or other employer's time or resources.

(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

Applicant intentionally, deliberately, and repeatedly falsified information about his prior employment and termination by that employer on his 2007 personnel security questionnaires. The reasons for his terminations by three employers are credible adverse information showing a pattern of inappropriate workplace behavior and rule violations. This conduct creates vulnerability to exploitation, manipulation, or duress because it affects Applicant's ability to retain and obtain other employment in the future. I find the above disqualifying conditions apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from personal conduct. I have considered all of the mitigating conditions and especially considered the following under AG ¶ 17:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with 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;
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and
- (f) the information was unsubstantiated or from a source of questionable reliability.

Applicant did not correct his deliberate falsifications concerning his termination by one employer and the marijuana use until confronted by the government investigator. The omitted information casts doubt on Applicant's reliability, trustworthiness, or good judgment because it is material and substantive in security clearance process. Applicant has not acknowledged any wrongdoing nor obtained any counseling or rehabilitation for

his past drug use and falsification. The information about his termination is substantiated. I find none of the above mitigating conditions apply.

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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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) the 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 be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. Applicant was an adult when he completed the SF-86. Mendacity is not a virtue. Applicant deliberately failed to make the full disclosure required by the SF-86. He voluntarily omitted the termination. There is no rehabilitation. Applicant was motivated by his desire to retain his job. Anytime any information of this nature is withheld by an applicant there is potential for pressure, coercion, exploitation or duress. It is likely that he will continue this type of falsification to enhance his credentials. In addition, the pattern of inappropriate behavior in the workplace which led to his terminations cannot be condoned.

Overall, the record evidence leaves me with questions or substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns under the guideline for Personal Conduct. I conclude the "whole person" concept against Applicant.

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 to 1.f:	Against Applicant

Conclusion

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

PHILIP S. HOWE
Administrative Judge