



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-06698
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jennifer I. Goldstein, Department Counsel
For Applicant: *Pro Se*

October 28, 2009

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

The Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) dated February 5, 2008. (Government Exhibit 1). On May 19, 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 on July 10, 2009, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on August 4, 2009. A notice of hearing was issued on August 12, 2009, and the hearing was scheduled for September 22, 2009. At the hearing the Government presented four exhibits, referred to as Government Exhibits 1 through 4. The Applicant presented six exhibits, referred to as Applicant's Exhibits A through F. He also testified on his own behalf. The record remained open until close of business on September 29, 2009, to allow the Applicant the opportunity to submit additional

documentation. The Applicant submitted one Post-Hearing exhibit, consisting of twenty pages, referred to as Applicant's Post-Hearing Exhibit A, which was admitted without objection. The official transcript (Tr.) was received on October 5, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

The following Findings of Fact are based on the Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 39 years old and has a high school diploma. He is employed by a defense contractor as a Material Warehouse Specialist and is seeking to obtain 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). After a complete and thorough review of the evidence in the record, and upon due consideration of the same, 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 that the Applicant is ineligible for clearance because he intentionally falsified material aspects of his personal background during the clearance screening process.

The Applicant denies allegation 1(a), and admits allegation 1(b), set forth under this guideline. (See Applicant's Response to the SOR dated July 10, 2009). The Applicant completed an Electronic Questionnaires for Investigations Processing (e-QIP) dated February 5, 2008. (Government Exhibit 1). Section 22 of the questionnaire, regarding his employment history, asked him, among other things, if in the last seven years he had ever been fired, quit or left a job. The Applicant responded, "NO". (Government Exhibit 1). This was an incorrect answer. The Applicant failed to disclose that he had been terminated from his employment in June 2003, for failing a drug test. (Government Exhibit 2).

Question 24 of the same questionnaire asked the Applicant if, since the age of sixteen or in the last seven years, whichever is shorter, he had illegally used any controlled substance. The Applicant responded, "NO". This was an incorrect answer. The Applicant failed to disclose that he had used marijuana in the last seven years, with the last time being on June 20, 2003. (Government Exhibit 2).

The Applicant initially stated that he did not knowingly or purposely falsified his answers on the application. He testified that he stopped using marijuana in 2001. (Tr. p. 29). He only used it one time after 2001, but did not remember when that was. (Tr. p. 30). At the time he tested positive for marijuana in 2003, and was terminated from his employment, he had not been using marijuana, it was just in his system. (Tr. p. 31). He had heard that it can stay in the system a month or so. He later testified that he did not

want to lose his job, so he marked, "NO" in response to the questions at issue. (Tr. pp. 33 and 39). He was also embarrassed about being fired from his previous job. (Tr. p. 33). He stated that at the time he tested positive for marijuana, he had been around people who had used marijuana, but that he had not used it. (Tr. p. 42). Later he admitted that his use of marijuana could have occurred closer to the time he tested positive for marijuana in 2003. (Tr. p. 48).

Applicant finally conceded and stated that;

Because truthfully, I shouldn't have anything to hide about the situation. But I made a mistake, and I did put "NO" down because I didn't want to lose my job. And I wasn't thinking clearly. I mean I have a lots of things against me at this point, and I didn't want to lose my job, just as something I don't do anymore, and it was such a long time ago for me. So, I lied. (Tr. p. 44).

Letters of recommendation from the Applicant's Facility Manager, Work Control Supervisor, Project Manager and coworkers attest to his hard working, honest and trustworthy nature. He is said to have a positive attitude, is a good communicator, is a fast learner and works well with his team. Overall he is highly respected on the job and is recommended for a position of trust. (Applicant's Exhibits A, B, C, D, E and F).

Applicant has received numerous certificates of completion and other awards for his work and dedication to his area of expertise. He has also successfully completed the Los Angeles Marathon showing physical strength, dedication and diligence. (Applicant's Post-Hearing Exhibit A).

POLICIES

Enclosure 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.

Condition that could raise a security concern:

16. (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.

Conditions that could mitigate a security concern:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, 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;
- 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 is voluntary;
- f. The presence or absence of rehabilitation and other permanent behavioral changes;
- g. The motivation for the conduct;
- h. The potential for pressure, coercion, exploitation or duress; and
- 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, a security clearance 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 such access may be involved in instances of dishonesty which 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 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 been dishonest on his security clearance application. (Guideline E). 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.

The evidence shows that the Applicant not only had problems being honest on his security clearance application, but also at the hearing. Initially, the Applicant was unable to clearly explain why he marked “NO” in response to the questions at issue. His testimony was not credible and did not make logical sense. As the hearing progressed, he realized the importance of being honest and came forward with the fact that he had lied to protect his job. Based upon his pattern of dishonesty, however, done intentionally to conceal the information from the Government, he is ineligible for a security clearance at this time. I have observed and noted, however, the fact that he has outstanding accomplishments in other areas, and that hopefully, he may at some point meet the eligibility requirement for access to classified information. However, under the guidelines required by the Department of Defense Directive, he is not eligible at this time. Accordingly, I find against the Applicant under Guideline E.

I have also considered the “whole person concept” in evaluating the Applicant’s eligibility for access to classified information. 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.

In total, the Applicant has not demonstrated that he is sufficiently trustworthy to 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 Government's Statement of Reasons.

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.

DECISION

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge