



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



In the matter of:)
)
) ISCR Case No. 09-07597
)
)
Applicant for Security Clearance)

Appearances

For Government: William T. O'Neal, Esquire, Department Counsel
For Applicant: Ronald C. Sykstus, Esquire

July 25, 2011

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Statement of the Case

On April 17, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to renew a security clearance for his position with a new defense contractor. While previously working for defense contractors, Applicant had access to classified information. In March 2009, Applicant's former employer submitted an adverse information report concerning Applicant's conduct that may have an adverse impact on his access to classified information to the appropriate security officials. After reviewing the results of an ensuing background investigation completed on June 15, 2009, adjudicators for the Defense Office of Hearings and Appeals (DOHA) issued to Applicant an interrogatory to clarify or augment potentially disqualifying information. After reviewing the results of the background investigations and Applicant's response to the interrogatories, DOHA could not make the preliminary affirmative

findings required to issue a security clearance. On September 21, 2010, DOHA issued a Statement of Reasons (SOR) to Applicant detailing security concerns for personal conduct under Guideline E. These actions were 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 adjudicative guidelines (AG) effective in the Department of Defense on September 1, 2006.

Applicant answered the SOR on October 9, 2010. He admitted the three allegations under Guideline E, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on February 2, 2011. The case was assigned to me on February 24, 2011. DOHA issued a Notice of Hearing on March 18, 2011, for a hearing on April 7, 2011. I convened the hearing as scheduled. The Government offered three exhibits, marked and admitted into the record without objections as Government exhibits (Gov. Ex.) 1 through 3. Applicant and nine witnesses testified on his behalf. Applicant offered eight exhibits marked and admitted into the record without objection as Applicant exhibit (App. Ex.) A through H. DOHA received the transcript of the hearing (Tr.) on April 22, 2011.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact. Applicant admitted the three allegations under personal conduct. His admissions are included in my findings of fact.

Applicant is a 34-year-old systems engineer working as an embedded test integrator for a defense contractor. He is a college graduate with a bachelor's degree in management information systems. He is married with two children. After graduating from college, Applicant worked as a systems engineer for a government contractor from August 1999 to October 2003. He then worked for defense contractor A as a systems engineer until April 2007. He worked for another defense contractor from April 2007 until March 2008, and then returned to defense contractor A as a senior systems engineer. He continued working for defense contractor A until starting work for his current employer, defense contractor B, in March 2009. He left defense contractor A because he no longer liked the tasks he was assigned and defense contractor B assigned him to tasks more to his liking. Applicant has held a security clearance since April 2001. (Tr. 20-230; Gov. Ex. 1, e-QIP, dated April 17, 2009)

Applicant was on temporary duty for defense contractor A in June 2007 at an Air Force base. His sister, an Air Force officer, was assigned to that base. He stayed with her for the five days he was on temporary duty at that location. He submitted a travel voucher requesting reimbursement for lodging at a rate lower than the authorized government lodging reimbursable rate. Attached to the travel voucher was a receipt for lodging expenses stating that he stayed at his sister's residence and gave the address of her house. The voucher further noted that he paid a \$450 lodging expense in cash.

His sister did not run a lodging business at her residence and she did not provide him with the receipt. Applicant believes he created the receipt himself. His company reimbursed him for this travel including the claimed lodging expenses at his sister's residence. He did not reimburse his sister for any expenses she incurred. Applicant believed he was following the correct procedures for claiming lodging reimbursement for staying with a relative. When Applicant left the company in 2007 shortly after submitting reimbursement for travel expenses, his travel claims were not investigated by company A. (Tr. 30-32, 61-65, 72-23; Gov. Ex. 2, Corrective Action Report, dated February 26, 2009, at 106-115)

After returning to work for defense contractor A, Applicant traveled to the same Air Force base on temporary duty in June 2008 for a few weeks and stayed with his sister. Upon his return, he submitted a travel voucher similar to the one he previously submitted in 2007. He listed an expense for lodging at his sister's residence at a rate lower than the authorized Government reimbursement rate. A copy of the actual submitted travel voucher is not in the file. The travel clerk at defense contractor A challenged Applicant's lodging reimbursement request for his stay at a relative's residence. The clerk provided Applicant the Government Joint Travel Regulation provision concerning reimbursement for lodging expenses when staying with a relative. The Government regulation was used by the company as a guide to determine reimbursement for travel. Since Applicant did not incur a lodging expense, and did not provide the company with his sister's actual expenses for hosting him, the company denied the request for lodging reimbursement. Applicant was directed to submit an amended voucher not claiming a lodging expense. Applicant was paid for the expenses he actually incurred on the amended voucher.

Applicant and the travel clerk corresponded by e-mail concerning his lodging claim. Applicant noted that the travel expenses should be calculated for a city near the Air Force base since he was unable to stay at the base and the city was the closest place with a per diem rate. He researched the Government travel regulations himself and questioned the travel clerk concerning reimbursement for lodging with relatives. Applicant believes that the rules for reimbursement for lodging expense with relatives are not clear. He also believes he should not have submitted the travel vouchers as he did. Applicant knew from this exchange of information with the travel clerk that he could only be reimbursed for the actual expenses incurred by the relative. He did not try to determine the actual expense incurred by his sister during his stay. (Tr. 32-35, 53-56, 55-62, 65-66, 73-77; Gov. Ex. 2, Corrective Action Report, dated February 26, 2009, at 100-103; App. Ex. B, Additional e-mails, dated June 25, 2008; App. Ex. G, Travel Regulations Frequently Asked Questions, dated March 28, 2011)

Applicant traveled to the same location for the third time in January 2009, and stayed with his sister. This time he submitted with his travel voucher a receipt for lodging expenses at a fictitious bed and breakfast. Again he listed a room rate that was lower than the authorized government room rate. Applicant admitted that he created this document using his computer. He gave the bed and breakfast a fictitious name, address, and lodging rate. He stated he did not know if he was entitled to

reimbursement since he did not receive a clear answer from his company on his June 2008 request for information. He wanted his sister to be reimbursed for her expenses in hosting him. Defense contractor A's travel clerk could not find a listing for the claimed bed and breakfast. She denied the lodging expenses and informed Applicant's supervisor. An audit revealed that Applicant had submitted the March 2007 travel voucher requesting reimbursement for lodging expenses at his sister's residence. (Tr. 35-37, 66-68; Gov. Ex. 2, Corrective Action Report, dated February 26, 2009, at 95-99) His sister noted that Applicant did offer to pay her the lodging at the government rate but she declined. (App. Ex. H, e-mail, dated March 31, 2011)

Applicant started interviewing with defense contractor B for a position with that company on January 26, 2009. He was informally offered a position on February 9, 2009. He notified his supervisors at defense contractor A that he was negotiating a new position with another defense contractor. He was formally offered the position with defense contractor B on February 18, 2009, and accepted it on February 23, 2009. He submitted his resignation to defense contractor A on the same day. On February 25, 2009, when his supervisors at defense contractor A learned of his resignation, they attempted to get him to stay with the company. (Tr. 37-48; App. Ex. C; e-mails, dated February 25, 2009; App. Ex. D, Hiring documents and e-mails, dated April 6, 2011)

Defense contractor A started investigating Applicant's fraudulent travel claim as early as February 6, 2009. On February 26, 2009, Applicant was counseled by his supervisor and received an administrative warning for violating the company's travel and ethics policies. Applicant was advised that additional non-compliance with the policies would result in immediate termination of employment. When Applicant left defense contractor A in March 2009, his final pay was docked \$450 for the 2007 incorrect lodging payment. This was the first time Applicant heard that defense contractor A classified the travel documents he submitted as fraudulent rather than ineligible. Defense contractor A submitted a report concerning the false travel documents to the appropriate security officials. On March 17, 2009, Applicant was notified of the report by defense contractor B's security manager. (Tr. 48-52, 66-71 ; App. Ex. E, Memorandum, dated March 6, 2009; App. Ex. F, e-mails, dated March 17, 2009)

Applicant testified he received defense contractor A's personnel handbook when he started working for them. He signed the company's ethics policy as required by the contractor. He did not review the company's contract with the Government and does not know under the contract what travel expenses are reimbursable by the Government. He agrees that intentionally submitting a fake lodging receipt is fraud. However, he does not believe he submitted the travel document with the intent to deceive. The payment of the lodging expenses at his sister's house is unclear under the travel rules. He understood that defense contractor A would reimburse him for any cost he incurred while on travel for them. He understood he had to submit vouchers verifying his expenses except for meals and incidentals which were reimbursed at a set rate per day. For lodging expenses, he had to submit a voucher. The Government's Joint Travel Regulation would be used as a guide by defense contractor A to determine reimbursement. He submitted a voucher for the 2007 travel noting he stayed at his

sister's resident and that the cost was \$75 per day. He did not actually incur that cost since his sister did not charge him for the expenses. His company initially paid his 2007 lodging expense. For the 2008 travel, he submitted a lodging expense voucher which was not incurred since he again stayed at his sister's house. After being advised that he could not claim reimbursement for staying at his sister's house, he created a false receipt for lodging expense paid on his January 2009 travels. He did not have lodging expenses on this trip. (Tr. 77-84)

Applicant's supervisor stated that he interviewed and hired Applicant in February 2009 for his position as an imbedded test engineer for defense contractor B. He sees Applicant on a daily basis and rates Applicant as very professional. Since working for his company, Applicant has excelled and received bonuses and raises. He has no questions concerning Applicant's reliability, trustworthiness or honesty. However, he would have questions concerning someone who submitted a fictitious travel voucher. The supervisor also noted that there were some disagreements and friction between defense contractor A and other subcontractors concerning hiring of personnel away from that company. He is also aware that there was dissatisfaction by defense contractor A's employees and their company. (T. 87-103)

The Government technical lead on Applicant's contract testified she has known Applicant for approximately two years. Applicant does an excellent job and is a self starter. He researches and documents on his own new components that could be added to the program. She acknowledged that there is disagreement between defense contractors A and B. (Tr. 103-109)

A program lead testified that he has known Applicant since 2003 and worked on and off with him for approximately eight years. He knows Applicant is an excellent worker and he never questioned Applicant's handling of classified information. He has never heard derogatory comments concerning Applicant's reputation for honesty and trustworthiness. He does not have questions concerning Applicant being granted access to classified information. (Tr. 111-116)

A lead integrator for a defense contractor testified that he has known Applicant since 2006 and would see him daily when they worked together on embedded test programs. He knows of the allegations against Applicant and thinks Applicant is getting a bad deal. (Tr. 116-120)

A program manager for defense contractor A testified that he worked with Applicant at the company. During part of this time, Applicant worked directly for him for approximately a year. Applicant was an outstanding worker and he would like to have Applicant work for him again. He does not believe his company acted correctly in reporting Applicant for filing false travel documents since Applicant did not benefit from any travel fraud. As Applicant's manager, the witness signed the corrective action letter Applicant received on February 26, 2009. He was not aware of the action before signing but only signed to indicate that the action did take place. (Tr. 120-126)

Another lead integrator for defense contractor A testified that he was Applicant's co-worker for over two years at defense contractor A. When Applicant returned to the company, he became Applicant's manager. He does not agree that Applicant submitted fraudulent travel documents. He believes that the documents were submitted because of a misinterpretation of the travel rules. If he were in authority at defense contractor A, he would not have submitted the action report concerning Applicant to security officials. He believes defense contractor A treats employees well, but there are disagreements between defense contractors A and B. (Tr. 127-132)

An assistant systems engineer for defense contractor B testified he has worked with Applicant for the last two years. He sees Applicant daily since the programs they work on are interconnected. Applicant is honest and cognizant of security requirements. He does not believe submitting the report concerning Applicant's submission of fraudulent travel documents was correct. However, he also believes the report does not place Applicant in a bad position. He has no concerns about Applicant's handling of classified information. (Tr. 132-136)

A family friend testified that she has known Applicant and his family for approximately a year. She believes Applicant is such a good person that she trusts him to care for her sons. (Tr. 136-140)

Applicant's wife also testified. She has been married to Applicant for over eight years. They have two children ages seven and four. She does not believe her husband is a liar. Her family is military and she has experience with travel vouchers. She believes the voucher submitted by Applicant made absolute sense. (Tr. 140-144)

Applicant presented a package of information showing that he received exceptional performance awards and bonuses both at his present company and by other employers. He presented certificates of appreciation and recognition of his professional accomplishments. He also presented his performance appraisals at his present company showing his outstanding performance and value to his team. (App. Ex. B, Exhibits A through T, Certificates and Awards)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered 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 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.

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 for 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 protect classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline E, Personal Conduct

A security concern is raised because conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified information. (AG ¶ 15) Personal conduct is always a security concern because it asks the central question does the person’s past conduct justify confidence the person can be entrusted to properly safeguard classified information.

Applicant submitted a false travel voucher for reimbursement of lodging expenses after being told that he was not eligible for reimbursement for such expenses at his sister's house. He also tried to claim money for expenses he did not pay. These facts raise Personal Conduct Disqualifying Condition (PC DC) AG ¶ 16(b) (deliberately providing false and misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative); and PC DC AG ¶ 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 indicting 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).

The 2007 lodging voucher claimed reimbursement for expenses at his sister's house. Even though Applicant did not incur a lodging expense at his sister's house, he listed his sister's residence for lodging reimbursement at a fictitious cost below the Government's reimbursement rate. Applicant reasonably believed he submitted the voucher correctly, even though he did not pay his sister anything for his lodging. The voucher was paid. Since Applicant did not know the rules concerning reimbursement for lodging with a relative, he did not submit the documents with intent to deceive.

Likewise, Applicant did not know the rules for reimbursement when he submitted the 2008 lodging reimbursement request. He had been paid for the 2007 lodging expenses and followed the same procedures in 2008. Applicant again used a lodging expense below the Government reimbursement rate. The travel voucher submitted in June 2008 was not available, but it can be assumed that the same address for his sister was used and the only different information was the lodging expense. He again knew that he did not pay his sister for his lodging. At the time he submitted the voucher, he was not aware he was not entitled to reimbursement for lodging expenses at his sister's house. He learned he was not entitled to reimbursement when his request was denied in June 2008. When Applicant submitted the lodging document in June 2008, he did not intend to deliberately deceive his company on payment of the expenses.

However, when Applicant submitted the travel voucher in January 2009, he knew he was not entitled to reimbursement for lodging expenses at his sister's house because his previous request had been denied and he was advised of the company policy on reimbursement for lodging with a relative. Since he was aware that he was not entitled to reimbursement, he personally created and submitted a fraudulent receipt for a fictitious bed and breakfast. His actions were a deliberate attempt to deceive. He received a warning from his employer concerning his submission of fraudulent travel documents. Since Applicant did not submit the fraudulent lodging receipts for the March 2007 and June 2008 travel with intent to deceive, I find for Applicant as to the part of SOR allegation 1.a pertaining to those two lodging receipts. The Government has established SOR 1.a concerning the submission of fraudulent lodging receipts pertaining to the January 2009 travel expenses. The Government also established the allegation at SOR 1.b. The Government did not establish the allegation at SOR 1.c. While an audit found that the lodging expense receipt submitted was not proper, Applicant did not submitted the receipt with intent to defraud.

In regard to the part of the allegation in SOR 1.a pertaining to the January 2009 lodging expense, and SOR allegation 1.b, I have considered Personal Conduct

Mitigating Condition (PC MC) AG ¶17(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 PC MC AG ¶ 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 is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment). These mitigating conditions do not apply. Applicant deliberately submitted a false travel document. Applicant was specifically told by his company's travel clerk that he was not entitled to reimbursement for lodging expenses at his sister's house. To counter this, he created a false document showing that he stayed at a lodging establishment. He never made an effort to correct his actions until confronted by this company. Even at the hearing, he did not totally acknowledge his wrongful act but attempted to shift the blame to his company. The deliberate act of submitting a false document is not a minor offense. It also happened recently, a little over two years ago. Applicant deliberately submitted a false document in direct violation of company policy. The circumstances were not unique in that Applicant acted deliberately with the knowledge his document was false. These factors reflect adversely on his judgment, reliability, candor, trustworthiness, and ability to follow rules and regulations, and indicate he may not properly protect classified information. The administrative warning issued by his supervisor was appropriate. The personal conduct security concerns under SOR 1.a pertaining to the January 2009 lodging expense and SOR 1.b are not mitigated.

I have also considered Applicant's contention that his former employer, defense contractor A, acted improperly by reporting his submission of the false document to security officials because of a disagreement between them and his present employer. Applicant had been told in 2008 that he could not be reimbursed for lodging at his sister's house unless he could establish her actual expenses for his lodging. Knowing that he could not be reimbursed, he created and submitted a false document for a fictitious lodging establishment to claim reimbursement. Defense contractor A immediately investigated Applicant's travel voucher after it was submitted and found it was fraudulent. The company has an obligation and duty to report his conduct to the appropriate security agency and not ignore his conduct since it could have a bearing on his security worthiness. (See NISPOM 1.302(a), Adverse Information Reports) To claim that the company acted improperly and maliciously by reporting his conduct is totally without merit.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. An 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 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 the facts and circumstances surrounding this case. I considered that Applicant deliberately provided a false document to his employer to gain reimbursement for lodging expenses he did not incur after being advised that he could not be reimbursed for those expenses. I considered the testimony of his supervisors, friends, and fellow employees concerning his reputation for honesty, candor, reliability, judgment, and trustworthiness. I considered his reputation as an excellent employee and his record of accomplishments, and that he successfully held a security clearance for a number of years. However, offset against this good character information are his actions in knowingly and deliberately providing false documents with intent to gain monetary reimbursement for expenses he did not incur. This type of action indicates that he may not properly safeguard classified information. The record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the personal conduct security concerns under SOR 1.a and 1.b.

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
Subparagraph 1a:	For Applicant as to the March 2007 and June 2008 lodging expenses receipts. Against Applicant as to the January 2009 lodging expenses receipt.
Subparagraph 1.b;	Against Applicant
Subparagraph 1.c:	For Applicant

Conclusion

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

THOMAS M. CREAN
Administrative Judge