



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



In the matter of:)
)
) ISCR Case No. 10-01232
)
Applicant for Security Clearance)

Appearances

For Government: Kathryn D. MacKinnon, Deputy Chief Department Counsel
For Applicant: *Pro se*

02/07/2014

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the case file and pleadings, I conclude that Applicant failed to provide adequate information to mitigate security concerns under Guideline I for psychological conditions and under Guideline E for personal conduct. Eligibility for access to classified information is denied.

Statement of the Case

On October 5, 2009, Applicant submitted an Electronic Questionnaire for Investigation Processing (e-QIP) to obtain a security clearance for his employment with a defense contractor. (Item 5) He had not previously held eligibility for access to classified information. On June 1, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns for psychological conditions under Guideline I and personal conduct under Guideline E. (Item 1) 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 adjudicative guidelines (AG) effective in the DOD on September 1, 2006.

Applicant answered the SOR in an undated response. He denied the seven allegations under Guideline I. He admitted to SOR allegation 2.a under Guideline E alleging he was sentenced by a court-martial, but denied intentional falsification under SOR 2.b and 2.c. (Item 3) Applicant initially requested a hearing. He then requested a continuance and eventually he requested a decision on the written record. (Item 4, e-Mail correspondence) Department Counsel submitted the Government's written case on August 23, 2013. Applicant received a complete file of relevant material (FORM) on October 9, 2013, and was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant did not provide any additional information in response to the FORM. The case was assigned to me on November 21, 2013.

Findings of Fact

I thoroughly reviewed the case file and the pleadings. I make the following findings of fact.

Applicant is a 43-year-old technical school graduate who is working as a heavy equipment mechanic for a defense contractor in Afghanistan. He also served as a mechanic foreman for a defense contractor in Iraq for four years. He was married from approximately 1989 until 1999, and has one child from this marriage. He married his second wife in 2000. He served on active duty in the Army from 1988 until 1995 when he was court-martialed and received a dishonorable discharge. (Item 3, e-QIP)

Under Guideline I for psychological conditions, the SOR alleges that Applicant has a history of hearing voices starting as a child and in approximately 1989, he was hospitalized and advised to take prescription medication (SOR 1.a); that in 1993, he was hospitalized and diagnosed with schizophrenia and again prescribed mental health medication which he discontinued against medical orders (SOR 1.b); that in 1999, he received mental health treatment by the Department of Veteran's Affairs (VA) and was again prescribed mental health medication for schizophrenia which he again discontinued against medical advice (SOR 1.c); that he again received mental health treatment from the VA in 2003, was prescribed medication which he again chose not to take against medical orders (SOR 1.d); that in July 2007, he began having auditory hallucinations and paranoid delusions, was prescribed medication for his schizophrenia which he again chose not to take against medical orders (SOR 1.e); that in 2009, while working for a defense contractor, he again had auditory hallucinations and paranoid delusions and continued to refuse to take prescribed medication and was hospitalized in 2011 and refused to take medication against medical orders (SOR 1.f); and that he continues to be diagnosed with schizophrenia and has continued to be advised to take his mental health medication (SOR 1.g).

Under Guideline E for personal conduct, the SOR alleges that Applicant was tried by general court-martial in 1995, convicted of conspiracy, false official statement, larceny of Government funds, and fraud. He was sentenced to a dishonorable discharge, confinement for eight years, forfeiture of all pay and allowances, and

reduction to private E-1. He was released on parole in 1999 (SOR 2.a). The SOR further alleges that in response to questions on his e-QIP concerning his military history, he answered "honorable" when asked his type of discharge and "no" when asked if he had ever received a discharge that was not honorable (SOR 2.b); and that he answered "no" to the question asking if he had ever consulted with a mental health professional regarding an emotional or mental health condition or if he was ever hospitalized for such a condition (SOR 2.c).

Applicant provided an affidavit concerning his mental health issues during a security investigation conducted by Office of Personnel Management (OPM) investigators. In the affidavit, he admits he has heard voices which resulted in at least three hospitalizations in military or VA hospitals. He stated that there is a history of schizophrenia in his family. His father, brother, and grandmother have been diagnosed with schizophrenia. As a result of the medical treatments and hospitalizations, he was diagnosed with paranoid schizophrenia. He admitted he was advised by health care professionals to take medication. In the affidavit, he outlines the repeated hospitalizations at VA and military hospitals, multiple and continued diagnoses of schizophrenia, and his discontinued use of medication for mental health issues against medical orders since 1993. He stated he initially took the prescribed medications but admitted that he discontinued use of the medications against medical orders because it caused excess sleeping and he did not think he was having any mental health problems. He admitted telling mental health professionals treating him that he was taking the medication prescribed and that the medications were helping him. He did not tell them he had discontinued use of the medications. Applicant stated that he tried to explain to his treating psychiatrists that he did not need the medications. The psychiatrists told him he did need medication because schizophrenia is not curable. He knew if he refused the medications, he would be sent to the hospital. (Item 6)

The case file contains extensive military and VA medical records for Applicant. The records show that Applicant presented himself to at least three military or VA medical facilities for evaluation and treatment. The records show repeated diagnosis of schizophrenia and medication being prescribed. (Item 11, 12, 13, 14) Various medical and mental health histories and evaluations completed when Applicant presented for treatment show Applicant's mental health challenges and diagnosis of schizophrenia. (Item 11, 28-35, Item 13 at 2-4)

The commander's report of disciplinary action and Federal Bureau of Investigations (FBI) records show that Applicant was tried by general court-martial for conspiracy, false official statement, larceny of Government funds, and fraud in 1995. Applicant submitted 21 fraudulent claims for "do-it-yourself" moves. He claims to have conspired with a civilian government employee in submitting the false claims, and that he received over \$25,000 in fraudulent funds. He was sentenced to a dishonorable discharge, forfeiture of all pay and allowances, confinement for eight years, and a reduction to private E-1. He served four years before being paroled in 1999. (Item 9 and Item 10)

Applicant was asked in a DOHA interrogatory why he failed to list the court-martial felony charges and why he reported that he received an honorable discharge on the security clearance application. Applicant noted that he did have an honorable discharge at one time from the Army. He stated that he did not report the felony charges because he was afraid of losing his job and he is ashamed of the court-martial and the dishonorable discharge. (Item 7 question 6)

In his affidavit to OPM investigators, Applicant stated that he did not initially report his past mental health treatment on the security clearance application for fear of being disqualified. He enjoys his job and did not want his past to jeopardize his job. He did not realize that his mental health information could be obtained from other sources. He thought the information was confidential. He does not feel his mental health in any way affects his ability to do his job. (Item 6 at 6)

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.

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

Analysis

Guideline I, Psychological Conditions

A security concern is raised because certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline. A duly qualified mental health professional (e.g. clinical psychologist or psychiatrist) employed by, or acceptable to and approved by the U.S. Government, should be consulted when evaluating potentially disqualifying or mitigating information under this guideline. (AG ¶ 27)

The Government presented medical records to show that Applicant was treated by at least two psychiatrists and at four medical treatment facilities with diagnoses of paranoid schizophrenia. He was prescribed various medications for his condition, but by his own admission he refused to take the medications. The medical information raises Psychological Conditions Disqualifying Conditions AG ¶ 28(a) (behavior that casts doubt on an individual's judgment, reliability, or trustworthiness that is not covered under any other guideline, including but not limited to emotionally unstable, irresponsible, violent, paranoid, or bizarre behavior); AG ¶ 28(b) (an opinion by a duly qualified mental health professional that the individual has a condition not covered under any other guideline but may impair judgment, reliability, or trustworthiness). Applicant's failure to follow treatment plans for his paranoid schizophrenia raises AG ¶ 28(c) (the individual has failed to follow treatment advice related to a diagnosed emotional, mental, or personality condition, e.g., failure to take prescribed medication).

I considered Psychological Conditions Mitigating Conditions AG ¶ 29(a) (the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan); AG ¶ 29(b) (the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional); AG ¶ 29(c) (recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation); AG ¶ 29(d) (the past emotional instability was a temporary condition (e.g. one caused by death, illness, or marital breakup), the situation has been resolved, and

the individual no longer has indications of emotional instability); and AG ¶ 29 (e) (there is no indication of a current problem). None of these mitigating conditions apply.

Applicant has had a diagnosis of paranoid schizophrenia since at least 1989. This is not a temporary condition since he has been diagnosed and treated many times by duly qualified medical professionals for paranoid schizophrenia. Paranoid schizophrenia may be an inherited medical condition in his family. He voluntarily entered treatment programs but consistently refused to take prescribed medication. Applicant has refused to follow medical advice, and has not shown an ongoing and consistent compliance with a treatment program. Applicant's condition is not under control, and there is a high potential for recurrence or exacerbation. Applicant has not mitigated security concerns based on psychological conditions. I find against Applicant as to SOR allegations 1.a to 1.g.

Personal Conduct

Personal conduct is a security concern 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 and sensitive information. Of special interest is any failure to provide truthful and candid answers during the process to determine eligibility for access to classified information or any other failure to cooperate with this process (AG ¶ 15). Personal conduct is always a security concern because it asks whether the person's past conduct justifies confidence the person can be trusted to properly safeguard classified or sensitive information. Authorization for a security clearance depends on the individual providing correct and accurate information. If a person conceals or provides false information, the security clearance process cannot function properly to ensure that granting access to classified or sensitive information is in the best interest of the United States Government.

Applicant was convicted by court-martial in 1995 of the felony offenses of conspiracy, false official statement, larceny, and fraud. These offenses go directly to the question of his reliability, trustworthiness, and good judgment. His conduct raises Personal Conduct Disqualifying Condition AG ¶ 16(c) (credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, 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); 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 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 AG ¶ 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).

Applicant responded "No" to questions on his security clearance application pertaining to the whether he had ever received a discharge that was not honorable, and if in the last seven years he had consulted with a health care professional regarding an emotional or mental health condition or hospitalized for such a condition. The evidence is clear that Applicant received a dishonorable discharge and that he has been diagnosed by health care professionals as paranoid schizophrenic. Applicant's false answers to these questions raises a security concern under Personal Conduct Disqualifying Condition AG ¶ 16(a) (the 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 eligibility or trustworthiness, or award fiduciary responsibilities).

I considered Personal Conduct Mitigating Conditions AG ¶ 17(a) (the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts); AG ¶ 17(b) (the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully); 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); 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 AG ¶ 17(e) (the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress). These mitigating conditions do not apply.

Applicant started to engage in fraudulent and deceitful personal conduct in 1995 when he was involved in a conspiracy to defraud the government. He was tried and convicted of conspiracy, fraud, false official statement, and larceny of Government funds and sentenced to a dishonorable discharge, confinement, and forfeiture of all pay and allowances. He served four years in prison for his conduct. He continued his deceitful conduct by his answers to the questions concerning his type of discharge and mental health treatment on the security clearance application. He admitted his fraudulent and deceitful actions in his statement to the OPM investigator. He deliberately provided incorrect answers on the application because he was embarrassed by the information and he did not want to lose his job. His misconduct is not minor since he was actively engaged in fraudulent and deceitful conduct. While the

initial incident leading to the court-martial took place over 18 years ago, his fraudulent and deceitful conduct is current since his pattern of behavior has continued to the completion of his security clearance application in 2009. Applicant has failed to present sufficient information to mitigate the security concerns based on his personal conduct.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for access to classified information 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 access to classified information 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. Applicant has been diagnosed as paranoid schizophrenic and he refuses to take medication for his mental health condition. He was tried and convicted by court-martial for offenses involving fraud and deceit. He continued to be deceitful when he completed his security clearance application and provided incorrect information on the nature of his discharge and did not reveal his mental health condition and treatment. There is little to show that Applicant is reliable, trustworthy, and exercises good judgment. His mental health condition and his lack of trustworthy and responsible conduct over a period of time indicate he may not be concerned or act responsibly in regard to protecting classified information. Overall, the record evidence leaves me with questions and doubts about Applicant's judgment, reliability, and trustworthiness. He has not established his suitability for access to classified information. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his psychological condition and his personal conduct. Eligibility for access to classified information is denied.

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 I: AGAINST APPLICANT

Subparagraphs 1.a – 1.g: Against Applicant

Paragraph 2, Guideline E: AGAINST APPLICANT

Subparagraphs 2.a – 2.c: 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 access to classified information. Eligibility for access to classified information is denied.

THOMAS M. CREAN
Administrative Judge