



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



In the matter of:)	
)	
)	ISCR Case No. 10-01468
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah A. Minster, Esquire, Department Counsel
For Applicant: *Pro se*

November 10, 2011

Decision

MOGUL, Martin H., Administrative Judge:

On November 30, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines B, J and E for Applicant. (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 within the Department of Defense for SORs issued after September 1, 2006.

Applicant replied to the SOR (RSOR) in writing on January 19, 2011. (Item 4.) A letter was sent from DOHA to Applicant on January 31, 2011, requesting that he respond as to whether he would prefer to have a hearing or to have a decision made without a hearing. (Item 5.) Applicant submitted a second RSOR on February 24, 2011, and he requested that his case be decided on the written record in lieu of a hearing. (Item 7.) On June 1, 2011, Department Counsel amended the SOR and withdrew the Guideline B concerns alleged in Paragraph 1 of the SOR. (Item 12.) On June 2, 2011, Department Counsel issued the Department's written case. A complete copy of the file

of relevant material (FORM) was provided to Applicant on June 2, 2011. In the FORM, Department Counsel offered 12 documentary exhibits. (Items 1-12.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on September 8, 2011. Applicant submitted no additional evidence. The case was assigned to this Administrative Judge on October 5, 2011. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his RSOR, Applicant admitted SOR allegation 2.a. under Guideline J, and allegations 3.a. and 3.b. under Guideline E. As reviewed above, the Paragraph 1 concerns have been withdrawn. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the admitted documents, and the FORM, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 40 years old. From Applicant's Electronic Questionnaires for Investigations Processing (e-QIP) (Item 8), I have been able to determine that he was born in Iraq, and became a United States citizen in 2000. Applicant's mother, father, four brothers, and three sisters are citizens and residents of Iraq. Applicant has been employed by a defense contractor as a translator for the United States military since March 2003, and he seeks a DoD security clearance in connection with his employment in the defense sector.

Guideline J- Criminal Conduct

2.a. The SOR alleges that Applicant was involved in an automobile insurance fraud scheme totaling approximately \$140,000 in filed claims from about 2000 to 2002. As noted above, Applicant admitted this allegation in his RSOR. This insurance fraud scheme was investigated in 2002 by the Federal Bureau of Investigation (FBI), and an investigation report was created. (Item 9.) In the report it stated:

[Applicant] and others were involved in a staged automobile insurance fraud scheme. With the 'salvage title,' [Applicant] was able to obtain full insurance coverage on severely damaged vehicles. [Applicant] would then 'stage' an accident and the insurance company would reimburse him based on the claim. The National Insurance Crime Bureau has totaled the filed claims as approximately \$140,000. [Applicant] was interviewed by FBI Special Agents as part of this investigation. [Applicant] admitted his participation in the scheme.

Guideline E- Personal Conduct

3.a. The SOR alleges that the information set forth under paragraph 2., above, exhibits questionable judgement, lack of candor, dishonesty and untrustworthiness. As noted above, Applicant admitted this allegation in his RSOR.

3.b. The SOR alleges that during an interview with an authorized investigator for the Department of Defense, Applicant falsified material facts by stating that he was not involved in the transactions involving vehicle insurance fraud, whereas he had been involved in vehicle insurance fraud as alleged in 2.a., above. As noted above, Applicant admitted this allegation in his RSOR.

In a Report of Investigation, which was verified accurate on June 27, 2010, by Applicant in interrogatories propounded to him, it indicated that on January 5, 2009, during an investigation by an authorized investigator for the Department of Defense, Applicant falsified material facts by stating that he was not involved in the transactions involving vehicle insurance fraud, but he claimed to have only worked repairing vehicles for the owner. (Items 10 and 11.)

Mitigation

Applicant submitted a letter from a Military Analyst, who was Applicant's manager in Iraq. The manager was very positive in his description of Applicant, and offered that because of Applicant's background, Applicant was not aware of the need for full disclosure regarding his past criminal activity. (Item 7.) No evidence was offered to establish Applicant's lack of awareness for full disclosure.

A letter was also offered into evidence from a United States Senator, dated January 12, 2005, which was written to request that Applicant receive a Humanitarian Parole. There was no discussion of Applicant's criminal conduct and the misrepresentation by Applicant was made subsequent to the letter so it was not addressed in the letter. (Item 7.)

Finally, Applicant submitted copies of two Certificates of Appreciation and one Certificate of Achievement that he earned as a translator for the military. (Item 7.)

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 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching

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 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

Criminal Conduct

The security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 30:

Criminal activity creates doubt about a person’s judgement, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.

Regarding the Criminal Conduct Adjudicative Guidelines, I find that Disqualifying Condition AG ¶ 31(a) applies, “a single serious crime or multiple lesser offenses,” because of Applicant’s participation in an automobile insurance fraud scheme totaling approximately \$140,000 in filed claims from about 2000 to 2002. Since Applicant’s criminal conduct occurred in the time period of 2000 to 2002, I find that Mitigating Condition AG ¶ 32(a), “so much time has elapsed since the criminal behavior happened . . . that it is unlikely to recur . . . “ is applicable in this case. I find that Applicant’s criminal activity has been mitigated.

Personal Conduct

With respect to Personal Conduct, the evidence clearly establishes that Applicant participated in an automobile insurance fraud scheme during the time period of 2000 to 2002, and he also furnished false information to a Government investigator regarding his past criminal conduct as recently as January 5, 2009.

The Government relies heavily on the honesty and integrity of individuals seeking access to our nation’s secrets. If such an individual intentionally falsifies material facts or fails to furnish relevant information to the Government, it is extremely difficult to conclude that he nevertheless possesses the judgment, and honesty necessary for an individual given a clearance.

In reviewing the Disqualifying Conditions under Personal Conduct ¶16, I conclude that ¶ 16(b) applies because of Applicant’s “deliberately providing false or misleading information concerning relevant facts to an employer, investigator. . . or other official government representative.” ¶16(d)(3) also applies as Applicant’s conduct reviewed in total shows “a pattern of dishonesty or rules violations.” Because Applicant’s conduct occurred as recently as 2009, I do not find that any Mitigating Condition is applicable under ¶17.

Applicant’s criminal conduct and subsequent knowing falsification to a Government investigator about that criminal conduct, exhibits questionable judgement, lack of candor, dishonesty and unwillingness to comply with rules and regulations. I resolve Personal Conduct against Appellant.

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 the 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 the facts and circumstances surrounding this case. Based on the reasons cited above as to why the Mitigating Conditions do not apply under Guideline E, and the history of criminal conduct, misrepresentation, and questionable judgement, I find that the record evidence leaves me with significant questions and doubts as to Applicant's eligibility and suitability for a security clearance under the whole-person concept. For all these reasons, I conclude Applicant has not mitigated the security concerns.

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 B:	Withdrawn
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraphs 2.a.:	For Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraphs 3.a. and 3.b.:	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.

Martin H. Mogul
Administrative Judge