



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 10-02156
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel

For Applicant: *Pro se*

May 26, 2011

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigation Processing (e-QIP) on September 21, 2009. (Item 5.) On November 3, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline E (Personal Conduct) concerning the Applicant. 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 submitted an Answer to the SOR on December 3, 2010, and requested a decision be made without a hearing. Department Counsel submitted a File of Relevant Material (FORM) to Applicant on December 30, 2010. Applicant received the FORM on January 11, 2011, and was given 30 days to submit any additional information. Applicant did not submit any additional information. The case was assigned to me on March 3, 2011. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant is 57 and married to his second wife. He is employed by a defense contractor and seeks to obtain a security clearance in connection with his employment.

Guideline E - Personal Conduct

The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has made false statements to the Government during the clearance screening process; and also engaged in conduct which shows poor judgment, unreliability or untrustworthiness. Applicant admits all the allegations under this paragraph. Those admissions are deemed findings of fact.

1.a. Applicant was fired in February 2008 from his former employer (Company A). This was due to Applicant accepting \$500 from an outside person to bypass Company A rules and improperly approve plans that were subsequently submitted to a governmental entity for approval. The deception was discovered, Applicant's role was uncovered, and he was discharged from his position. (Item 6 at 7-9.)

1.b. Applicant was interviewed by an investigator from the Office of Personnel Management (OPM) on November 12, 2009. During that interview, Applicant stated that he left Company A to accept a better paying position with Company B. (Item 6 at 3.) This was a false statement since, as previously stated, Applicant had been discharged from Company A due to his improper actions.

Applicant admitted the deception in a subsequent interview, stating that he was not proud of what he did. The report goes on to state, "The subject does not wish to recall what happened in 2/2008 nor have to discuss it because he is extremely ashamed of himself for making such a foolish decision." (Item 6 at 8.)

1.c. Applicant filled out an e-QIP on September 21, 2009. (Item 5.) The Questionnaire, at Section 13c, asked the Applicant whether, in the last seven years, he had, "been fired from a job, quit after being told you would be fired, left a job by mutual agreement following charges or allegations of misconduct, left a job by mutual agreement following notice of unsatisfactory performance, left a job for other reasons under unfavorable circumstances, or been laid off from an employer." He stated, "Yes," and disclosed he had been laid off from Company B. He intentionally did not disclose his discharge after allegations of misconduct from Company A.

1.d. In the same Questionnaire, at Section 12, Applicant was asked whether he had received a degree from any school. Applicant stated that he had received an associate's degree in 1984 from a community college. In fact, Applicant had not completed the course work for a degree. He alleged in his interview with the OPM investigator that Applicant had done sufficient course work for a degree, but did not graduate due to financial issues. His transcript, however, shows that he had only completed 17 hours of course work and was on probation. (Item 6 at 7, 15.)

1.e. The Government alleges in this subparagraph that Applicant admitted in his response to interrogatories propounded to him by DOHA that he had misrepresented his education background to two potential employers by stating he had an associate's degree. The exhibit does not completely support this statement. Applicant did admit that he had made a claim to prospective employers concerning his having a degree. However, he goes on to state, "This may be correct but I believe my year of experience was the main facture (*sic*). 1. [Company B] - Never submitted resume, interview was done @ job site . . . 2. [Company A] - Was hired for experience for field work." (Item 6 at 13.) This allegation cannot be resolved with the available record. Accordingly, this allegation is found for Applicant.

1.f. The Applicant's e-QIP (Item 5), at Section 22.d., asks, "Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?" Applicant answered, No." This was an incorrect response, since Applicant had been arrested and charged with Driving While Intoxicated in 1971. Applicant stated in his OPM interview that this omission was inadvertent. (Item 6 at 5.)

Applicant provided no evidence concerning the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

Policies

Security clearance decisions are not made in a vacuum. 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 to be used as appropriate 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized in Section 7 of 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

(Guideline E - Personal Conduct)

The security concern relating to Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty or unwillingness to comply with rules or regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information.

As stated above, allegation 1.e. is found for the Applicant.

Based on the facts as found above, I have considered the disqualifying conditions under AG ¶ 16 and especially considered the following:

(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;

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative; and

(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 knowingly and purposely misled the Government on several occasions concerning why he left employment at Company A, his educational background, and his alcohol-related criminal history. Insufficient evidence was produced that mitigated these acts in any way. Applicant had an obligation to be completely forthcoming with the Government, he failed. Paragraph 1 is found against the Applicant.

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 applicant's conduct and all the circumstances. 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. 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant lied to the Government both on a questionnaire and to an investigator in 2009 about several different topics. The record is bereft of any mitigating information. Under AG ¶ 2(a)(3), Applicant's conduct is recent. Based on the state of the record, I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, at the present time, I find that there is the potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)), and that there is a high likelihood of recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his personal conduct

On balance, it is concluded that Applicant has not successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding against 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 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 THE APPLICANT
Subparagraph 1.a. :	Against the Applicant
Subparagraph 1.b. :	Against the Applicant
Subparagraph 1.c. :	Against the Applicant
Subparagraph 1.d. :	Against the Applicant
Subparagraph 1.e. :	For the Applicant
Subparagraph 1.f. :	Against the 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.

WILFORD H. ROSS
Administrative Judge