



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



In the matter of:)
)
) ISCR Case No. 10-07355
)
)
Applicant for Security Clearance)

Appearances

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

05/31/2012

Decision

CURRY, Marc E., Administrative Judge:

Applicant charged more than \$10,000 of unauthorized expenses to his Government credit card between 2006 and 2008, then lied about it during an interview with a Government investigator in 2010. Clearance is denied.

Statement of the Case

The Defense Office of Hearings and Appeals (DOHA) issued an undated Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline E, Personal Conduct. 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).

Applicant answered the SOR on January 3, 2012, admitting SOR subparagraph 1.a and denying SOR subparagraph 1.b. Also, he requested a determination without a

hearing. On February 9, 2012, Department Counsel prepared a File of Relevant Material (FORM). Applicant received the FORM on March 7, 2012 and filed a reply on April 2, 2012. On April 17, 2012, the case was assigned to me.

Findings of Fact

Applicant is a 55-year-old single man with two children, ages 23 and 17. He was married from 1984 to 1997. The marriage ended in divorce.

Applicant served in the U.S. Army from 1978 to 1993. He was discharged honorably. Applicant earned a college degree in 2005. There is no record evidence of his major. Since April 2008, he has been working as a technical business consultant for a defense contractor. Previously, he worked as the chief of staff for a federal government agency from 2001 through 2008. (Item 5 at 5-6, 8, 10, 14, 17,19)

In January 2008, the division of Applicant's agency that coordinates Government travel received an e-mail notification from Applicant's bank that his account was past due. (Item 7 at 10) A subsequent audit revealed that multiple delinquent charges over a two-year period did not match the dates that Applicant had been conducting official Government business.

An investigation ensued. In a signed, sworn statement Applicant admitted to using his Government travel card for unauthorized purchases, and that "all of the cash advances which [were] documented on [his] Government travel card statements were made . . . with the intent of using the money to gamble." (Item 7 at 11) Also, he admitted to abusing his Government credit card.

The cash advances used for gambling totalled \$3,144. Other expenses included hotels, restaurants, and air fares. (Item 7 at 7) The unauthorized charges totalled \$10,257.

In March 2008, Applicant resigned from his job before the investigation was finished. In July 2010, Applicant was interviewed by a Government investigator as part of this security clearance investigation. The investigator prepared a written summary of the interview. In an answer to an interrogatory, Applicant certified that he read the interview summary and that it accurately reflected what he told the investigator. (Item 6 at 12)

During the 2010 interview, Applicant admitted to making unauthorized purchases on a Government-issued credit card, but said that the charges were less than \$1,000. (Item 6 at 3) When asked about gambling, he stated that he had never experienced any gambling-related indebtedness, and that the previous investigation did not concern any gambling-related issues. He also characterized any allegation of indebtedness in excess of \$1,000 as farfetched. (Item 6 at 3)

In Applicant's SOR Answer, he denies misleading the investigative agent who interviewed him in 2010. He contends that he was "very, very nervous during [his]

interview.” (Item 4 at 1) Also, he stated that he was unaware of the full amount of the unauthorized charges when he spoke with the investigative agent in 2010.

Policies

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions that are used to evaluate an applicant’s eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. According to AG ¶ 2(a), the administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. This process involves the scrutiny of the following variables :

- (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.

This process of considering these variables when evaluating an applicant’s security-clearance worthiness is known as the “whole-person concept.”

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. 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 in seeking a favorable security decision.

Analysis

Department Counsel alleges that Applicant staged automobile accidents and filed fraudulent insurance claims totalling more than \$140,000. (FORM at 5) None of the SOR allegations pertain to insurance fraud, nor is there any record evidence of insurance fraud. Consequently, I did not consider this allegation in reaching my conclusion.

Guideline E, Personal Conduct

Under this guideline, “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." Moreover, of particular concern is any failure to provide truthful and candid answers during the security clearance process. (AG ¶ 15)

Applicant's use of his Government credit card to charge more than \$10,000 of unauthorized purchases over a two-year period triggers the following disqualifying conditions under 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;

(d)(3) a pattern of dishonesty or rule violations;

(d)(4) evidence of a significant misuse of Government or other employer's time or resources; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as . . . engaging in activities which, if known, may affect the person's personal, professional, or community standing . . .

Applicant's explanation for this behavior, provided to the security clearance investigator in 2010, contradicted his explanation provided in 2008 to the internal affairs agent from the agency where he was working when he made the unauthorized charges. This raises the issue of whether AG ¶ 16(b) "deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative," applies.

Applicant told the security clearance investigator in 2010 that the unauthorized credit card purchases totalled less than \$1,000 and were unrelated to gambling expenses, when in fact, the gambling expenses, alone, exceeded \$1,000. Moreover, in the interview with the investigator from his agency in 2008, he admitted that several of the unauthorized charges related to gambling. I conclude that Applicant is not credible, and that AG ¶ 16(b) applies.

Applicant was the chief of staff of a federal Government agency when he abused his Government-issued credit card. This compounds the nature and seriousness of the conduct. Moreover, his contention in his Response to the FORM that the conduct was mitigated by the passage of time has little probative value given his 2010 falsification to the security clearance investigator. I conclude that none of the mitigating conditions set forth in AG ¶ 17 apply.

Whole-Person Concept

I have considered the whole-person factors listed at AG ¶ 2(a) in my analysis of the relevant adjudicative guidelines. My conclusion that Applicant has not mitigated the security concerns remains unchanged.

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 1.a - 1.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.

MARC E. CURRY
Administrative Judge