



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



In the matter of:)	
)	
)	ISCR Case No. 10-08213
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline H. Jeffreys, Esq., Department Counsel
For Applicant: *Pro se*

December 5, 2011

Decision

LAZZARO, Henry, Administrative Judge

Applicant mitigated the security concern caused by his deliberate falsification of employment and security forms when he corrected the falsification during an interview without being confronted with facts pertaining to the falsification. Clearance is granted.

History of the Case

On June 7, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.¹ The SOR alleges a security concern under Guideline E (personal conduct). Applicant submitted an undated response to the SOR that was notarized on July 23, 2011, in which he requested a hearing and admitted all SOR allegations.

¹ This action was taken under Executive Order 10865, DoD Directive 5220.6, dated January 2, 1992, as amended (Directive), and adjudicative guidelines which became effective within the Department of Defense for SORs issued after September 1, 2006.

The case was assigned to me on September 28, 2011. A notice of hearing was issued on October 12, 2011, scheduling the hearing for October 25, 2011.² The hearing was conducted as scheduled. The government submitted four documentary exhibits that were marked as Government Exhibits (GE) 1-4 and admitted into the record without objection. Applicant testified but did not submit any documents. The record was held open to provide Applicant the opportunity to submit documentation in support of his case. Three documents were timely received, marked as Applicant Exhibits (AE) 1-3, and admitted into the record without objection. Department Counsel's forwarding e-mail indicating she did not object to the admission of Applicant's post-hearing submissions was marked as Appellate Exhibit (App. Ex.) I, and made part of the record. The transcript was received on November 10, 2011.

Findings of Fact

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough review of the pleadings, testimony and exhibits, I make the following findings of fact:

Applicant is a 27-year-old man who has been employed as a linguist by a defense contractor since July 2009. As a linguist, he has served in Iraq and Afghanistan with the United States military. His duties have frequently required him to travel in military vehicles in which he is exposed to potential improvised explosive devices (IED). He has worked with soldiers when they were ambushed, and he has routinely been exposed to indirect hostile fire. An Army Major who Applicant has worked for describes Applicant as an excellent worker with a positive attitude. An Army sergeant who Applicant has worked with describes him as a dedicated team member. An Army colonel who has supervised Applicant and received reports about his service from other soldiers describes Applicant as being intelligent, responsible, tactful, precise, professional, knowledgeable, and a highly skilled and respected linguist. Applicant's references all enthusiastically recommend him for continued service, although none of his references indicate they are aware of the security clearance concerns alleged in the SOR.

Applicant immigrated to the United States from Afghanistan with his parents and siblings in October 2001. He became a naturalized United States citizen in April 2009. Applicant graduated from high school in May 2003. He thereafter attended a community college from which he received an associate's degree in business administration in May 2007. He intended to attend to a local university but for unspecified reasons was not admitted. Applicant worked part-time at several grocery stores as a customer service representative from May 2002 until July 2009. He is single and has no dependents, although he does provide some financial support to his parents.

One of Applicant's father's friends suggested to Applicant that he should apply for a position as a linguist with a defense contractor. Applicant applied for the position in about January 2009, and he was sent a security clearance application and a document entitled

² The case was scheduled on October 25, 2011, to coincide with Applicant's one week visit to the United States from Afghanistan. He waived the 15-day notice requirement on the record (Tr. 16-18).

Prenomination Personal Interview Form to fill out in July 2009. In each of those forms he denied he had ever used a controlled substance in response to applicable questions. Applicant was sent by his prospective employer to a different city for about two weeks to undergo interviews and other assessments as part of the company's hiring process. He was required to fill out another security clearance application. Again, in response to the applicable question, he denied he had ever use a controlled substance.

Applicant admits he deliberately failed to disclose in the three forms that he briefly experimented with marijuana in the company of friends on two occasions in March 2008. He testified the reason he failed to disclose his use of marijuana is because he did not understand the significance of a security clearance and thought the job he was applying for was similar to applying for a job in a retail store where he didn't want his prospective employer to get the wrong impression that he was a drug addict.

After Applicant submitted the three forms, he was required to undergo a detailed interview. His responses to the many questions that were asked of him during that interview are included in GE 4. Applicant testified that before being interviewed, he and the other applicants who were being processed with him were told that it was important that they be truthful and that any omissions or falsifications would be discovered during their ensuing background investigations. During the interview, Applicant was asked to describe his drug usage. The interviewer recorded that Applicant stated he smoked marijuana three times with the last time being in March 2008, and that he had experimented with marijuana while in college. Applicant recalls that what he told the interviewer was that he smoked marijuana on several occasions in March 2008.

Policies

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the disqualifying conditions and mitigating conditions for each applicable guideline. Each clearance decision must be a fair and impartial decision based upon the relevant and material facts and circumstances, the whole-person concept, and the factors listed in ¶¶ 6.3.1 through ¶¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Guideline E (personal conduct), with its disqualifying and mitigating conditions, is most relevant in this case.

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.³ The Government has the burden of proving controverted facts.⁴ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁵

³ ISCR Case No. 96-0277 (July 11, 1997) at 2.

⁴ ISCR Case No. 97-0016 (December 31, 1997) at 3; Directive, Enclosure 3, Item E3.1.14.

⁵ *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

although the government is required to present substantial evidence to meet its burden of proof.⁶ “Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.”⁷ Once the Government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁸ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁹

No one has a right to a security clearance¹⁰ and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹¹ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.¹²

Analysis

Guideline E, Personal Conduct

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. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. (AG 15)

Applicant admittedly and deliberately failed to disclose his use of marijuana in the employment application and two security clearance applications he submitted in July 2009. Disqualifying Condition (DC) 16(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* applies.

Applicant was a relatively young and inexperienced person when he submitted the forms in issue. He credibly explained that he did not appreciate the significance of the forms and was concerned that he would be misperceived as a drug addict if he admitted his limited experimentation with marijuana. Most importantly, when it was impressed on Applicant the need to be completely honest during the interview process, he readily

⁶ ISCR Case No. 01-20700 (December 19, 2002) at 3 (citations omitted).

⁷ ISCR Case No. 98-0761 (December 27, 1999) at 2.

⁸ ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, Item E3.1.15.

⁹ ISCR Case No. 93-1390 (January 27, 1995) at 7-8; Directive, Enclosure 3, Item E3.1.15.

¹⁰ *Egan*, 484 U.S. at 528, 531.

¹¹ *Id.* at 531.

¹² *Egan*, Executive Order 10865, and the Directive.

disclosed his limited use of marijuana without being confronted with the facts about that usage. Mitigating Condition (MC) 17(a): *the individual made prompt good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts* applies.

Applicant's letters of reference from experienced Army officers and an Army sergeant establish that he has become a respected, mature, and valued member of their teams. He has proven himself to be reliable and trustworthy, even in the face of hostile fire. I had the opportunity to closely observe his appearance and demeanor during the hearing. I am convinced he has learned from his errors and that his misconduct is unlikely to recur. MC 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 it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment* applies.

Considering all relevant and material facts and circumstances present in this case, the whole-person concept, the factors listed in ¶ 6.3.1 through ¶6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, I find Applicant mitigated the personal conduct security concern. He has overcome the case against him and satisfied his ultimate burden of persuasion. It is clearly consistent with the national interest to grant Applicant a security clearance. Guideline E is decided for Applicant.

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: FOR APPLICANT

Subparagraphs 1.a-c: For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Henry Lazzaro
Administrative Judge

