



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



In the matter of:)	
)	
XXXXXXX, Xxxxxxx Xxxxx)	ISCR Case No. 10-10243
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: *Pro se*

02/23/2012

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ Applicant’s clearance is granted.

On 5 May 2011, the Defense Office of Hearings and Appeals (DOHA) sent Applicant a Statement of Reasons (SOR) listing security concerns under Guideline F, Financial Considerations.² Applicant timely answered the SOR, requesting a decision without hearing. The record in this case closed 25 November 2011, the day Applicant’s response to the Government’s File of Relevant Material (FORM) was due. He submitted no response. DOHA assigned the case to me 3 January 2012.

¹Consisting of the FORM, Items 1-9.

²DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the Adjudicative Guidelines (AG) effective within the DoD on 1 September 2006.

Findings of Fact

Applicant denied the SOR allegations, except for SOR 1.c, 1.d, and 1.h. He is a 55-year-old security officer employed by a Government contractor since February 2009. He seeks to retain the security clearance he was issued in May 2009.

Another Government agency (AGA) suspended Applicant's program access in July 2010 (SOR 1.h) for the personal conduct cited in SOR 1.a-1.g (Item 9). Chief among the stated concerns was AGA's conclusion that Applicant deliberately falsified clearance applications in April and August 2009 by failing to disclose, as required, that he had been arrested 10-15 times between 1975 and 1988 for drunk and disorderly and had been arrested in May 1990 on a drug charge that was later nolle prossed.

AGA's other stated reasons for suspending Applicant's program access, appropriated by DOHA as a basis for revoking his clearance, are the alcohol and drug arrests themselves, quitting jobs in February 2004 (SOR 1.e) and mid-2008 (SOR 1.g), and being fired from a job in February 2006 (SOR 1.f).

In January 2004, Applicant was allegedly rude to another security officer who used racial epithets to describe other fellow security officers. Applicant was reassigned to another location, effectively a demotion and reduction in pay. He did not report to the new work location, effectively quitting without notice. In February 2006, Applicant had a disagreement with his boss (and company owner) about the number of hours he was being required to work and not receiving his paycheck on time. The boss fired him. In September 2008, he quit his job after giving notice to his employer (Item 7).

Policies

The adjudicative guidelines (AG) list factors for evaluating a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also reflect a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). Any one disqualifying or mitigating condition is not, by itself, conclusive. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline E (Personal Conduct).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the government.³

Analysis

The Government failed to establish a case for disqualification under Guideline E. The most serious of the allegations is that Applicant falsified two clearance applications in 2009 when he failed to disclose 10-15 alcohol-related arrests, the most recent of which was 21 years ago at the time, and a May 1999 marijuana possession arrest, 19 years ago at the time, that was later nolle prossed. Notwithstanding that the pertinent question asks for any past drug or alcohol arrests without time limitation, the information allegedly falsified must still be both relevant and material.⁴ Twenty-year-old drug and alcohol arrests might be relevant and material if the aged conduct was more serious or if there had been more recent drug and alcohol arrests to constitute a pattern, but neither of those circumstances are present here. Further, Applicant stated that he misread the question, effectively vitiating the necessary intent to falsify.

The next most serious allegations are the 20-year old drug and alcohol arrests themselves. Nevertheless, those arrests are dated, and—without being more serious or connected to more recent and relevant drug or alcohol incidents—lack enough security significance to warrant revocation of Applicant’s clearance. Nor does the addition of three putatively adverse employment terminations persuade me that Applicant lacks the requisite judgment for access to classified information.⁵ Quitting a job or being fired from a job under contentious circumstances has no security significance unless those circumstances amount to employee misconduct. Applicant’s version of events, which I find credible, does not substantiate misconduct. And while I am aware of alternate plausible characterizations, I am not bound by those characterizations in making a decision, and I conclude that those characterizations are not reasonable based on a reading of the entire record.

³See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁴¶ 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, . . . [or] determine security clearance eligibility or trustworthiness. . . ;

⁵¶ 16.© 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;

