



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



In the matter of:)	
)	
)	ISCR Case No. 11-05842
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden Murphy, Esquire, Department Counsel
For Applicant: *Pro se*

12/30/2013

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, Applicant's eligibility for access to classified information is denied.

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on August 25, 2010. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on May 23, 2013, detailing security concerns under Guideline D, sexual behavior, Guideline E, personal conduct, and Guideline G, alcohol consumption. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines For Determining Eligibility for Access to Classified Information* (AG), implemented on September 1, 2006.

Applicant received the SOR on May 29, 2013, and he answered it on June 4, 2013. Department Counsel, on behalf of the Government, requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on July 15, 2013, and I received the case assignment on July 18, 2013. DOHA staff attempted, without success, to schedule a hearing by video-teleconference in August 2013. DOHA issued a Notice of Hearing on September 16, 2013 for a hearing scheduled on October 9, 2013. Due to the Government shutdown, DOHA cancelled the hearing. DOHA issued a second Notice of Hearing on October 30, 2013, and I convened the hearing as scheduled on November 21, 2013. The Government offered seven exhibits (GE) marked as GE 1 through GE 7, which were received and admitted into evidence without objection. Applicant testified. He submitted three exhibits (AE) marked as AE A through AE C, which were received and admitted into evidence without objection. The record closed on November 21, 2013. DOHA received the hearing transcript (Tr.) on December 4, 2013.

Findings of Fact

In his Answer to the SOR, Applicant admitted all the factual allegations of the SOR with explanation. His admissions are incorporated herein as findings of fact. He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 53 years old, works as a traffic administrator for a DOD contractor. He started working for his current employer in August 2004, and he started his current job in 2008. His employer has not issued any disciplinary actions against him. Applicant submitted three letters of recommendation. All praise his work skills and work ethics. They hold him in high regard. Their recommendations do not indicate that they have any knowledge of the issues related to his security clearance.¹

Applicant and his wife married in 1990. They have a 22-year-old son and a 19-year-old daughter. His wife is developing her own business after working in corporate business for many years. Applicant served in the United States Air Force for six years and received an honorable discharge. He attended college through online programs, accumulating two years of college credit.²

Applicant started consuming alcohol while in high school. Applicant consumes alcohol at home. He has never been arrested for driving under the influence of alcohol. In the mid-1990s, Applicant voluntarily entered an inpatient alcohol treatment program because he was consuming alcohol to the point of intoxication at least three times a week. Following three days of inpatient treatment, Applicant participated in three months of outpatient treatment through the facility, and he participated in alcoholics

¹GE 1; AE A - AE C.

²GE 1; GE 2; Tr. 19-20.

anonymous (AA). In late 2011, Applicant again sought treatment for his alcohol consumption and relationship problems. He received treatment from two psychiatrists for relationship problems, depression, and alcohol abuse. The psychiatrists treated him with medications, including anti-depressants and Gabapentin for alcohol cravings. He is no longer in treatment, and he continues to consume alcohol. He acknowledged that when he consumes alcohol, he drinks to excess. He described himself as a binge drinker. In the week before the hearing, he consumed alcohol five out of seven nights. He usually drinks five to seven glasses of wine. Applicant has been diagnosed with alcohol abuse, which he does not dispute. He recognized that he needs to abstain from alcohol use, but has not.³

Applicant was granted a secret clearance shortly after starting his employment in 2004. In 2008, his clearance was upgraded to top secret, and he applied for a sensitive compartmented information (SCI) clearance. He received an interim SCI; however, during his polygraph examination, information about past voyeurism came to light. As a result, his interim SCI clearance was revoked.⁴

Applicant admits that he began peeping at his mother in the shower at age seven or eight. Periodic events of peeping occurred over the years, with his last view of a non-family member in the mid-1990s. He continued to videotape his wife during periods of intimacy with him. She does not know about his voyeurism. He has not taped her since 2009. He is embarrassed and ashamed of this conduct.⁵

When he completed his e-QIP in August 2010, Applicant admitted in Section 25 that the his interim SCI clearance had been revoked and related the revocation to a lack of honesty in reporting illegal drug use and to questions about his character regarding some personal issues. He did not advise that his voyeurism was also a reason for the revocation. When he met with the security clearance investigator from the Office of Personnel Management (OPM) in October 2010, Applicant again stated that his SCI clearance had been revoked for using illegal drugs. Applicant met a second time with an OPM investigator and signed a sworn affidavit about information developed during the interview. In his affidavit, he again stated that he lost his SCI clearance for not being honest about illegal drug use, but did not mention his voyeurism as a reason nor did he admit that his voyeurism was a factor in the loss of his SCI clearance. Finally, he stated that he stopped drinking in January 2011, when in fact he stopped drinking in January 2012. Applicant admitted at the hearing and in his answers to the SOR that he intentionally falsified the information about his voyeurism activities because he did not want to reveal his conduct. During his testimony, he acknowledged that he erred when

³GE 4; GE 6; GE 7; Tr. 38-41, 52-54.

⁴GE 2; GE 5; Tr. 26-31.

⁵GE 4; Tr. 22-26.

he listed January 2011 as the date he stopped drinking because he stopped in January 2012 after he started medical treatment in late 2011.⁶

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used 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.

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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." An applicant has the ultimate burden of persuasion for 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 an 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.

⁶GE 4; Tr. 27-38.

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

Guideline D, Sexual Behavior

AG ¶ 12 expresses the security concern as:

Sexual behavior that involves a criminal offense, indicates a personality or emotional disorder, reflects lack of judgment or discretion, or which may subject the individual to undue influence or coercion, exploitation, or duress can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. No adverse inference concerning the standards in this Guideline may be raised solely on the basis of the sexual orientation of the individual.

AG ¶ 13 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

- (a) sexual behavior of a criminal nature, whether or not the individual has been prosecuted;
- (b) a pattern of compulsive, self-destructive, or high risk sexual behavior that the person is unable to stop or that may be symptomatic of a personality disorder; and
- (c) sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress.

Applicant began surreptitious peeking at his mother as a child. His behavior occurred every few years into adulthood. While he has not viewed any adult females since the mid-1990s, he has videotaped his wife during periods of intimacy in their home without her knowledge. His voyeuristic actions with his wife last occurred in 2009. Although his behavior is criminal in nature, he has never been arrested for his conduct. Because his conduct occurred over many years, it reflects a pattern of compulsive, self-destructive behavior which he had trouble controlling and could cause him to be vulnerable to coercion, exploitation, or duress. AG ¶¶ 13(a), 13(b), and 13(c) apply.

The Sexual Conduct guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 14(a) through ¶ 14(d), and the following are potentially applicable:

(c) the behavior no longer serves as a basis for coercion, exploitation, or duress; and,

(d) the sexual behavior is strictly private, consensual, and discreet.

Applicant behavior is strictly private and discreet. However, since his wife is unaware of his actions, it is not consensual. AG ¶ 14(d) has some applicability. Applicant has not viewed his wife improperly since 2009, making his behavior less likely to serve as a basis for coercion, exploitation, or duress. Applicant has partially mitigated the security concerns under AG ¶¶ 16(c) and 16(d).

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to 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 ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

(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, . . .

The Government alleges one incident of falsification by Applicant when he completed his 2010 e-QIP, one incident of falsification when he met with the security clearance investigator in 2009, and three incidents of falsification when he met with the security clearance investigator in 2012 and reduced his statements to a signed affidavit. For AG ¶ 16(a) to apply, Applicant's omissions must be deliberate. The Government established that Applicant omitted material facts from his 2010 security clearance

application when he concealed information about the revocation of his security clearance. He also omitted material facts about all the reasons for the revocation of his security clearance and provided the wrong date as to when he stopped consuming alcohol during his 2010 and 2012 personal subject interviews and in his 2012 sworn affidavit. This information is material to the evaluation of Applicant's trustworthiness and honesty. Applicant admitted that he falsified his answers to the questions about the reasons for the revocation of his security clearance in his e-QIP answer and in his 2012 personal subject interview. At the hearing, Applicant stated that he mistakenly put the wrong date for when he stopped drinking in his affidavit and during his personal subject interview.

When the allegation of falsification is controverted, the Government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's intent or state of mind at the time the omission occurred.⁷

Applicant readily admitted intentional falsification of his 2010 e-QIP and his intentional failure to provide information about his voyeuristic activities to the security investigator during his 2010 and 2012 personal subject interviews. A security concern is established under AG ¶¶ 16(a), 16(b), and 16(e) as to SOR allegations 2.b, 2.c, 2.d, and 2.e.

Concerning the incorrect date he told the investigator for when he stopped drinking, Applicant mixed up the years, which I find plausible. He did not intentionally falsify his answer to SOR allegation 2.f, which is found in favor of Applicant.

The Personal Conduct guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 17(a) through ¶ 20(g), and the following are potentially applicable:

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant admitted that he intentionally failed to list his voyeurism as a reason for the revocation of his security clearance. Because his conduct was intentional, he has not mitigated any security concerns about his falsification conduct. While he has finally

⁷See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004)(explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

admitted his voyeurism, he is embarrassed by his actions and does not want others to know about it. His embarrassment and his efforts to hide his conduct raise concerns that he can be vulnerable to manipulation, exploitation, or duress by those unauthorized individuals who seek to obtain classified information. He has not shown that he has taken steps to mitigate the security concerns raised by his voyeurism and his intentional falsification conduct. Applicant has not mitigated the security concerns raised under Guideline E.

Guideline G, Alcohol Consumption

AG ¶ 21 expresses the security concern pertaining to alcohol consumption, “Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.”

AG ¶ 22 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

(d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence; and

(f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program.

Applicant has a long history of alcohol abuse. He sought inpatient treatment in the mid-1990s and attended AA for a period of time. He eventually returned to consuming alcohol. He acknowledged that when he drinks alcohol, he drinks to excess and that he is a binge alcohol drinker. He has been diagnosed with alcohol abuse. He continues to binge drink and to consume alcohol to excess. AG ¶¶ 22(c), 22(d), and 22(f) apply and raise a security concern.

The Alcohol Consumption guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 23(a) through ¶ 23(d), and the following are potentially applicable:

(b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser).

Applicant acknowledges his problem with alcohol. He drinks alcohol at home and does not drive after consuming alcohol. He, however, has not taken any action to control his drinking, despite his admission that he must stop consuming alcohol. He has not mitigated the security concerns raised by his alcohol consumption.

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 an applicant's conduct and all relevant 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is well-respected at his job and performs his duties well. He has never been arrested, and he manages his finances. Since a child, Applicant has surreptitiously viewed women, in particular his wife during times of intimacy. He is ashamed of his conduct and seeks to hide it from others. His wife is unaware of his voyeurism. Because of his shame and embarrassment, he sought to hide the fact that his voyeurism was a reason for the revocation of his SCI clearance. Only recently has he acknowledged the conduct in the security clearance process. He has yet to tell his wife, and may never do so. He does not want others to know, and he is not receiving counseling to manage his problem. He continues to drink, and by his own admission, to excess. He admits to being a binge drinker. He recognizes that he should not consume any alcohol. He is not under treatment for his alcohol abuse, and is not motivated to seek treatment. Applicant's alcohol consumption by itself is sufficient to deny him a security clearance. Although he

spoke openly about his conduct at the hearing, his decision to deliberately falsify his e-QIP and to provide false information during his personal subject interview raise serious questions about his honesty and trustworthiness. Finally, while his voyeurism has ceased, without counseling, there is a question about whether he will return to this conduct. Applicant has not provided sufficient evidence to mitigate the security concerns raised in the SOR.

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 sexual conduct, his personal conduct, and his alcohol consumption under Guidelines D, E, and G.

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 D:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a -2.e:	Against Applicant
Subparagraph 2.f:	For Applicant
Paragraph 3, Guideline G:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant
Subparagraph 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.

MARY E. HENRY
Administrative Judge