



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



In the matter of:)
)
) ISCR Case No. 12-02407
)
Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

06/11/2013

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated personal conduct security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On October 12, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline E, personal conduct. The action was taken under Executive Order (EO) 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 (AG) implemented by the DOD on September 1, 2006.

Applicant answered the SOR on November 21, 2012. He did not specify whether he wanted a hearing or the case decided on the written record in lieu of a hearing. On December 11, 2012, Department Counsel requested a hearing. The case was assigned to me on April 18, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 23, 2013, scheduling the hearing for May 22, 2013. The

hearing was convened as scheduled. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified, called a witness, and submitted Applicant's Exhibits (AE) A and B, which were admitted without objection. DOHA received the hearing transcript (Tr.) on June 3, 2013.

Findings of Fact

Applicant is a 64-year-old employee of a defense contractor. He has worked for his current employer since 2008. He seeks to retain his security clearance, which he has held since about 2009. He was born in Afghanistan, and he attended college for two years there. He immigrated to the United States in 1977, and he became a U.S. citizen in 1989. He is married for the second time. He has four adult children from his first marriage. He has two adult stepchildren.¹

Applicant has worked as a linguist in Afghanistan since 2009. As a civilian contractor, Applicant was subject to General Order 1, which prohibited the possession and consumption of alcohol. His company's policy also precluded him from possessing and consuming alcohol while in Afghanistan.²

In April 2010, it was reported by a U.S. military investigator that Applicant was visiting a bar that was in their compound. After he was instructed not to drink and not to visit the bar, it was reported that he made attempts to obtain alcohol through other means. The report also noted that it was determined that Applicant was "revealing sensitive, but unclassified, details of his work with un-cleared local nationals."³

Applicant was assigned to work in Afghanistan with a U.S. military staff sergeant (E-6). In April 2010, the staff sergeant reported that Applicant frequented a bar that was in their compound as a guest of a contractor from an allied country. The staff sergeant stated that Applicant became intoxicated on several occasions. On one occasion, the staff sergeant warned Applicant that he was not authorized to drink. Applicant responded that he was a civilian and he could drink if he liked. The staff sergeant also reported that Applicant requested that military servicemembers from an allied country have alcohol mailed to Afghanistan for him. The staff sergeant reported that, over an unsecure Afghan cell phone, Applicant discussed with an unknown linguist the movements and activities of the other linguist.⁴

In July 2010, Applicant's employer reported to the DOD:

¹ Tr. at 25-26, 48-49; GE 1.

² Tr. at 29-30; GE 1-3.

³ GE 3.

⁴ Tr. at 19, 32; GE 2.

[Applicant] has violated company policy multiple times by drinking alcohol at a local bar, trying to obtain alcohol from [allied country] military, and discussing sensitive information over an unsecured Afghan cell phone.⁵

Applicant admits to drinking a minimal amount of alcohol at two birthday celebrations in Afghanistan, but he denies he became intoxicated. He regrets violating the rules, and he stated that it will not happen again. He also denies asking any allied servicemembers to obtain alcohol for him. He stated that he rarely drinks when he is in the United States, and then only a small amount. He stated that he only drinks about twice a year, on special occasions such as his wife's birthday. He stated that the staff sergeant who filed the report was jealous of the amount of money he was earning as a linguist in Afghanistan.⁶

Applicant denied that he revealed sensitive information to local nationals. He stated that he knew his job and the requirement to protect sensitive information. He stated that he did not have any relatives or friends in Afghanistan with whom he could have discussed sensitive information.⁷

Applicant's wife testified that she has never seen Applicant drink alcohol. She stated that Applicant told her that he did not drink in Afghanistan.⁸

I did not find Applicant's testimony credible. After considering all the evidence, I find by substantial evidence⁹ that Applicant drank on several occasions in Afghanistan and became intoxicated; that he requested that allied military servicemembers obtain alcohol for him; and that he revealed sensitive, but unclassified, details of his work with uncleared local nationals.

Applicant has worked under combat conditions in Afghanistan for several years. The U.S. military personnel he worked with praised his character, abilities, and service to the mission.¹⁰ One U.S. officer wrote:

At [location], [Applicant] lived in austere conditions, going months without showers or electricity. He shared living spaces with the [U.S.

⁵ GE 4.

⁶ Tr. at 19-48, 62-63.

⁷ Tr. at 22-24, 40-42.

⁸ Tr. at 52-56.

⁹ Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Department of the Navy v. Egan*, 484 U.S. at 518 (1988). "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

¹⁰ AE B.

servicemembers] in a dusty, war-torn, and crumbling facility infested with rodents and insects. He received little to no mail and ate a sub-standard, repetitive menu of MREs with the [U.S. servicemembers]. In every way, he suffered the "Spartan" conditions to which [U.S. servicemembers] have grown accustomed over the years. More importantly, he, along with the [U.S. servicemembers] at [location], received nearly 30 days of indirect fire and faced an ever-present IED threat. Despite these [un]inhabitable and life-threatening living conditions, [Applicant] remained stalwart in heart where others would have collapsed under the weight of circumstances. Throughout his meritorious service with the [U.S. servicemembers], he remained the consummate professional focusing on his duties. Moreover, [Applicant] personally expressed himself by providing fatherly care and devotion to the [U.S. servicemembers] with whom he worked, often cooking hot and fresh meals for [U.S. servicemembers] after a hard day's work. He often rewarded the [U.S. servicemembers] with his warmth and kind generosity, which in turn provided the [U.S. servicemembers] with a sense of home. In sum, I consider him a hero to both the United States and Afghanistan.¹¹

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 to be 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, administrative judges apply the guidelines 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."

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

¹¹ AE B.

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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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 ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(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;

(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; and

(f) violation of a written or recorded commitment made by the individual to the employer as a condition of employment.

Applicant drank alcohol and attempted to obtain alcohol while in Afghanistan. General Order 1 prohibited the possession and consumption of alcohol, and Applicant's company's policy also precluded him from possessing and consuming alcohol. Applicant revealed sensitive information to local nationals. His conduct showed poor judgment and an unwillingness to comply with rules and regulations. It also created a vulnerability to exploitation, manipulation, and duress. AG ¶¶ 16(c), 16(e), and 16(f) are applicable as disqualifying conditions.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(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;

(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 has not accepted responsibility for his actions. His denials were not credible. I am unable to determine that his problematic behavior is unlikely to recur. There are no applicable mitigating conditions.

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 the 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's favorable character evidence and his exemplary work under combat conditions in Afghanistan. However, I have concerns about his judgment and willingness to comply with rules and regulations.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has not mitigated personal conduct security concerns.

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
Subparagraphs 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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge