



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-06870

Appearances

For Government: David F. Hayes, Esquire, Department Counsel

For Applicant: *Pro se*

November 22, 2016

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on December 13, 2012. (Item 2.) On August 7, 2015, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guideline E (Personal Conduct) concerning Applicant. (Item 1.) 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) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on September 4, 2015 (Answer), and requested a decision by an administrative judge without a hearing. (Item 1.) Department Counsel submitted the Government's written case (FORM) to Applicant on December 6, 2015. The FORM contained four documents. Applicant acknowledged receipt of the FORM on January 7, 2016. He was given 30 days from receipt of the FORM to submit any additional documentation. Applicant did not submit additional information. The case

was assigned to me on March 28, 2016. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant is 34 and single. He is employed by a defense contractor and seeks to obtain a security clearance in connection with his employment.

Paragraph 1 (Guideline E - Personal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has engaged in conduct that shows poor judgment and trustworthiness on his part, and that he also made false statements to the Department of Defense during the clearance screening process. Applicant admitted both allegations under this paragraph. Those admissions are findings of fact.

1.a. In January 2012 Applicant began working for a Defense contractor in an IT position. He had jobs in this field on and off since 2006. He was fired from this job in February 2012 for falsifying documentation concerning his job, specifically his handwritten watch log. His employer stated, "In addition to delivering fraudulent logs to the government, [Applicant] also did not do a majority of the work conveyed in the log." Applicant was subsequently discharged from this job for "gross misconduct." (Item 4.)

Applicant stated in his Answer that he falsified the logs due to the press of other work. He also stated that he was not the only one to falsify the log. "It was a common occurrence for my co-workers [to] falsify the log and receive a verbal warning and thought I would receive the same." (Item 1.)

Applicant appealed his discharge to his state's Department of Labor, Licensing and Regulation. A hearing was held on April 27, 2012. Applicant attended the hearing. A written decision was issued on May 12, 2012, confirming that Applicant's discharge was appropriate and for gross misconduct. (Item 4.)

1.b. Applicant was interviewed by an authorized investigator for the Department of Defense on January 16, 2013. During that interview Applicant lied about the reasons behind his dismissal in February 2012, saying that it was due to a conflict between Applicant and the site lead. Applicant subsequently confirmed in writing and under oath on July 10, 2015, that the report of investigation accurately reflected the information that he provided in his interview. (Item 3.)¹

¹It is noted that Applicant also falsified his e-QIP concerning the reasons behind his dismissal. He said that his dismissal was due to, "Previous conflict with primary contractor." (Item 2, Section 13A.) Department Counsel elected not to allege this falsification. It will only be considered in deciding whether Applicant has mitigated the allegations, and under the "whole-person" concept.

Policies

Security clearance decisions are not made in a vacuum. When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used as appropriate 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 AG ¶ 2 describing the adjudicative process. The administrative judge's over-arching 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, "Any 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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. Security clearance decisions include, by necessity, consideration of the possible risk that the 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.

Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the

applicant concerned.” See *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Paragraph 1 (Guideline E - Personal Conduct)

The security concern relating to Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty or unwillingness to comply with rules or 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.

I have examined the disqualifying conditions under AG ¶ 16 and especially considered the following:

(b) deliberately providing false and misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information 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. This includes but is not limited to consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information;

(2) disruptive, violent, or other inappropriate behavior in the workplace;

(3) a pattern of dishonesty or rule violations;

(4) evidence of 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 (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing.

Applicant was terminated from a defense job in 2012 because he had consistently falsified his work time logs. Applicant well knew why he had been fired, yet less than a year later he actively deceived a Government investigator regarding the reasons for his dismissal. All of the stated disqualifying conditions apply to the facts of this case.

I have reviewed the mitigating conditions and find none of them apply to the facts of this case. The conduct that Applicant engaged in at his former employer was extremely serious, and could have adversely affected the national security. He subsequently lied about the reasons behind his dismissal at least twice. There is insufficient evidence that Applicant currently shows good judgment or is trustworthy and reliable. Paragraph 1 is found against Applicant.

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 the relevant circumstances. 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 administrative judge must 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. The discussion under Guideline E, above, applies here as well. Applicant failed to mitigate the security concerns related to the serious misstatements on his work log that led to his termination, as well as his falsifications to the Government regarding that dismissal.

Under AG ¶ 2(a)(1) and (2), Applicant's conduct was knowing and extremely serious under both allegations. I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I also cannot find that there is little to no

potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); or that there is little to no likelihood of continuation or recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with questions and 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 untrustworthy conduct, and related falsifications to the Government. Accordingly, the evidence supports denying his request for a security clearance.

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 and 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.

WILFORD H. ROSS
Administrative Judge