



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-01705

Appearances

For Government: Andrea M. Corrales, Esq., Department Counsel

For Applicant: *Pro se*

09/29/2016

Decision

COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the Government's security concerns under Guideline E, personal conduct. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On September 29, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline E, personal conduct. DOD CAF acted under Executive Order (EO) 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) implemented on September 1, 2006.

Applicant answered the SOR on October 26, 2015, and requested a hearing. The case was assigned to me on March 2, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 4, 2016, and the hearing was

convened as scheduled on March 29, 2016. The Government offered exhibits (GE) 1 through 5, which were admitted into evidence without objection. The Government's exhibit index was marked as hearing exhibit (HE) I. Applicant testified. He did not offer any exhibits. DOHA received the hearing transcript (Tr.) on April 8, 2016.

Findings of Fact

In Applicant's answer, he admitted both allegations in the SOR, except that he denied any intent to deceive by his answers on his security clearance application (SCA). After a thorough and careful review of all the pleadings and evidence, I make the following findings of fact.

Applicant is 41 years old. He is married and has two children, ages 8 and 11. Since March 2012, he has worked for a defense contractor as a security specialist. He has a bachelor's degree. He served in the Army from 1998 to 2005 when he was honorably discharged as a sergeant (pay grade E-5). He deployed to Kuwait in 2004 to 2005.¹

Applicant's admitted conduct raised in the SOR includes: (1) In August 2011, refusing to provide a urine sample to his employer after being presented with a reasonable suspicion letter and instead submitting his resignation (See SOR ¶ 1.a); (2) his deliberate omission or falsification by failing to disclose his resignation in lieu of providing an employer-required urine sample in August 2011 on his April 2012 SCA (See SOR ¶ 1.b)

From February 2009 to August 2011 Applicant worked as a security specialist for another government agency (AGA). He testified that his job was highly stressful and he did not enjoy it. Sometime before August 18, 2011, Applicant took leave and went on a family vacation. Upon returning to work, he was summoned to his supervisor's office where he was presented with a letter of "Notice of Reasonable Suspicion Testing for Illegal Drugs and/or Misuse of Alcohol." The letter stated that agency officials determined sufficient grounds existed to authorize Applicant's urinalysis testing for illegal drugs or misuse of alcohol (no further record evidence exists concerning the basis of the agency's suspicion). The letter also outlined that refusing to submit to testing was grounds for removal from federal service. Applicant decided to resign his position rather than to participate in the required testing. He signed a letter of resignation that same day. The letter did not state a specific reason for the resignation.²

Applicant filled out his SCA in April 2012. In the application he was asked to list all his previous employment. He listed his position at AGA from which he resigned rather than participate in a drug test as described above. He stated his reason for leaving was, "To pursue other employment and follow a career path away from

¹ Tr. 5, 18, 59, 61; GE 1.

² Tr. 19-20; GE 2, 3.

intelligence analysis.” When asked if he had been fired, quit after being told he would be fired, left by mutual agreement following charges or allegations of misconduct, or left by mutual agreement following notice of unsatisfactory performance, he checked the “no” box. During his Office of Personnel Management (OPM) interview in June 2012, he told the investigator that he “left the job for personal reasons.” He failed to mention that he resigned rather than participate in a required urinalysis test. During a second OPM interview in January 2013, when confronted with the resignation and refused-urinalysis issue, Applicant stated he resigned rather than take the drug test, but he did not consider that a refusal. He thought this was an opportunity to resign, something he had thought about for some time because of his job disgruntlement. He also denied using illegal drugs or having an intent to deceive with his SCA answers.³

In his hearing testimony, Applicant stated that he planned to resign before he received the urine test letter. He admitted that he would not have resigned on August 18, 2011, had he not received the letter. He further claimed he had prepared his own resignation letter. No such letter was offered into evidence. Applicant did not have another job offer when he resigned. He is the primary financial provider for his family. He had recently experienced financial difficulties, including seeking bankruptcy relief in 2010.⁴

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.

³ GE 1, 4, 5.

⁴ Tr. at 32, 47-48.

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, and has the ultimate burden of persuasion to obtain 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 that an applicant may deliberately or inadvertently fail to 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.

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 E, Personal Conduct

AG ¶ 15 expresses the personal conduct security concern:

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 in this case. The following disqualifying condition is 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; and

(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; and,

(4) evidence of significant misuse of Government or other employer's time or resources.

Applicant decided to resign his government position rather than submit to a urinalysis. His actions amount to untrustworthy and unreliable behavior. He deliberately misrepresented his reason for leaving his AGA position by stating he left to pursue other employment and by leaving out that he resigned rather than participate in a urinalysis test. His "no" answer to the question of whether he left by mutual agreement following an allegation of misconduct was a deliberate omission of relevant facts. The letter requiring his participation in a urinalysis test is an allegation of misconduct and his resignation accepted by his employer constitutes mutual agreement. Applicant's denials of intentionally misrepresenting this information are not credible. AG ¶¶ 16(a) and 16(d) apply.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered all of the mitigating conditions under AG ¶ 17 and found the following relevant:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(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.

I considered all of the facts and circumstances surrounding Applicant's falsifications and his resignation in lieu of taking a required urine test. He had an opportunity during his first OPM interview to reveal the accurate circumstances of his resignation, but he failed to do so. It was not until he was confronted during the second interview that he spoke to the issue. Falsifying or omitting relevant information on a

security clearance application is not a minor offense and doing so casts doubt on his trustworthiness, reliability, and good judgment. AG ¶¶ 17(a) and 17(c) do not apply.

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 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 considered Applicant's military service. However, I also considered that rather than take a required urinalysis test as a federal employee he chose to resign and intentionally omit this information and misrepresented the circumstances of his resignation when he completed his SCA. Applicant failed to provide sufficient evidence to mitigate the security concerns.

Overall the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the Guidelines.

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:
Subparagraphs 1.a - 1.b:

AGAINST APPLICANT
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.

Robert E. Coacher
Administrative Judge