



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



In the matter of:)	
)	
)	ISCR Case No. 15-01999
)	
Applicant for Security Clearance)	

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: Gregory F. Greiner, Esq.

01/04/2017

Decision

RIVERA, Juan J., Administrative Judge:

Applicant charged 359 hours to a Defense agency contract that he did not work. His behavior demonstrated questionable judgment, dishonesty, and an unwillingness to comply with rules and regulations. His evidence is insufficient to mitigate the personal conduct security concerns. Clearance is denied.

Statement of the Case

Applicant submitted his most recent security clearance application (SCA) on December 3, 2013. After reviewing it and the information gathered during a background investigation, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline E (personal conduct) on October 15, 2015.¹ Applicant answered the SOR on

¹ DOD acted 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* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DOD on September 1, 2006.

December 3, 2015, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).

The case was assigned to me on April 12, 2016. DOHA issued a notice of hearing on April 25, 2016, scheduling a hearing for June 6, 2016. Applicant was granted a continuance to wait for the production of documents from other agencies requested by Applicant under the Freedom of Information Act and the Privacy Act. (Hearing Exhibit 1) The hearing was rescheduled for July 21, 2016.

At the hearing, the Government presented the testimony of one witness and offered four exhibits (GE 1 through 4). Applicant testified and submitted one exhibit (AE 1), comprised of Tabs A through H. All exhibits were made part of the record without objections. DOHA received the hearing transcript (Tr.) on July 28, 2016.

Findings of Fact

Applicant denied the factual allegations in SOR ¶ 1.a, with explanations. After a thorough review of the record evidence, and having considered Applicant's demeanor while testifying, I make the following findings of fact:

Applicant is a 32-year-old employee of a defense contractor. He received his bachelor's degree in 2006, and completed his master's degree in 2012. He has never been married and has no children.

Applicant started working in 2003 in a variety of summer and temporary jobs until 2007, when he was hired by a defense contractor. Between 2007 and November 2012, he worked for three different defense contractors. In 2008, Applicant was granted a secret level clearance. He was hired by his current employer, a defense contractor, in November 2013. According to Applicant, his clearance was upgraded to top secret in 2014.

In 2012, the inspector general for the federal agency (Agency) that contracted Applicant's employer conducted an investigation that revealed timekeeping discrepancies on Applicant's timecard reporting and his badge in-and-out readings. It was determined that between January 2011 and July 2012, Applicant billed 359 hours that he did not work. Applicant was confronted by his company supervisors with these discrepancies. Applicant admitted to his company supervisors that he did not work all the hours he recorded in his timesheet. He charged to the defense contract many hours he had not worked. Applicant told his supervisors during a meeting he was charging the contractor for time he knew it was not appropriate to charge for.

After he was hired, Applicant was trained by his company's human resources section and his supervisor about company policies and his responsibilities completing the timesheets. Applicant did not follow his employer's timecard policies. He was also counseled "repeatedly" concerning his failure to comply with his employer's timecard policies. (Tr. 22-23, 29-30) Applicant's supervisors during the period in question denied

they authorized Applicant to leave work prior to completing his eight-hour work day. Applicant's employer determined that he engaged in fraudulent timekeeping, and offered him to resign or be terminated. Applicant resigned his job.

In his 2013 SCA, Applicant disclosed that he resigned from his job with a defense contractor in lieu of being terminated. He stated:

While working on contract at the [Agency] as a terrorism analyst. The Agency Inspector General ran a random audit of badge-in/out times for the building. Their office found discrepancies between my reported time and those listed in the Agency system (using badge swipes). This was reported to my employer who gave me the option to resign (or else I would be fired), so I [resigned].

I attempted to explain that many of these discrepancies were likely due to filling out time sheets days after the fact and having to estimate my hours, as well as routinely being out of the building for meetings/conferences at other agencies or sites. I also mentioned that it was never explained to me that I was to keep a to-the-minute record of my time in almost two years of working on site at the Agency. I always checked with my Agency supervisors before leaving for the day, who knew where I was at all times. I went on to say that the very last thing I would ever do is intend to deceive or defraud with regard to my time sheets. (I) mentioned my outstanding reputation among my coworkers and supervisors at the Agency, as well as a passion for my work (often beyond normal hours).

I tried to impress upon my (employer) supervisors that while I had not followed protocol properly, this was due to a lack of training in company and agency time keeping policy and procedures; something that was not thoroughly outlined until almost two years after the fact. After discussing with government employees the amount of training they receive at the outset of their assignment to the Agency, I was shocked to learn how much simply was not told to me when I began. I explained that my dedication to the mission. as well as an absolutely flawless record. should be taken into account. but unfortunately this did little to change their minds. I was told that none of these things mattered and this was simply what had to happen.

Applicant was interviewed by a government investigator in March 2014. He told the investigator that prior to being confronted with his timesheet discrepancies, he had received remedial training on how to complete his timecards. Applicant told the investigator that he was not trying to falsify his timecards or defraud the government or his employer. He attributed his discrepancies to sloppy timekeeping, completing his timecards days after working and estimating his times.

In his SOR response and at his hearing, Applicant claimed that some of his time discrepancies were explained by approved meetings outside of his office and while completing unapproved work outside of the office. Applicant further claimed he was unaware of his employer's expectations associated with his work hours and location, and that he did not receive any training from his employer about completing his timesheet. He contended that some hourly omissions were partially caused by inadequate training and incomplete understanding of the contract requirements. Applicant's claims were not supported by the record evidence.

At his hearing, Applicant denied that he admitted to committing timesheet fraud. He admitted that he was "too relaxed and not in compliance with the timekeeping policy (he) did not understand the degree of accuracy to which he was supposed to be recording (his) time, and no one had ever remediated (him) on the degree of accuracy." (Tr. 77)

Applicant noted that he has no other disciplinary infractions or problems during his eight years working for defense contractors. His clearance was increased to a top secret level after the concerns alleged in the SOR surfaced, and he currently works in an important planning and training position. Applicant believes that the passage of time, his good performance, and his honesty show that his misconduct is not likely to recur, and that he is reliable, trustworthy, and uses good judgment. Applicant further believes that he has matured substantially since 2012. He believes he has demonstrated professional growth, and continued handling classified information appropriately.

Applicant's supervisor during the time in question considered him to be a great employee. His performance review for the period February 2015 to January 2016, indicates Applicant exceeded expectations and is considered to be a great asset to his employer. (AE 1, Tab B) Applicant submitted a letter of commendation and two reference letters indicating that he has demonstrated a high-level of competency, professionalism, and knowledge.

Policies

Eligibility for access to classified information may be granted "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person's suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to

classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

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 the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest 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. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Guideline E, Personal Conduct

AG ¶ 15 articulates the security concern for 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.

Between January 2011 and July 2012, Applicant billed a Defense agency for 359 hours that he did not work. (SOR ¶ 1.a) Applicant admitted to his supervisors that he did not work all the hours he recorded in his timesheet, and that he knew it was not appropriate to charge for hours he did not work.

Applicant's behavior triggers the applicability the following disqualifying conditions under AG ¶ 16:

(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

AG ¶ 17 lists six conditions that could potentially mitigate the personal conduct security concerns:

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

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(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;

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

(f) the information was unsubstantiated or from a source of questionable reliability.

Considering the evidence as a whole, including Applicant's age, education, experience working for government contractors while possessing a clearance, and the circumstances surrounding his questionable behavior, I find that Applicant's evidence is insufficient to mitigate the Guideline E security concerns.

In light of his work experience and education, I do not accept Applicant's claims of not knowing how to accurately complete a timesheet. His claims of checking with his Agency supervisors before leaving for the day are not supported by the record evidence. Additionally, the evidence shows Applicant was trained when he was hired on his company's policies and about his timesheet responsibilities. He was later counseled many times for his failure to comply with those policies. In sum, Applicant's conflicting testimony, in light of the evidence as a whole, is not credible and undermines his explanations and otherwise favorable or mitigating evidence.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c). I have incorporated my comments under Guideline E in my whole-person analysis.

Applicant receives credit for his eight years working for defense contractors. He is considered to be a great employee, exceeded expectations, and demonstrated a high-level of competency, professionalism, and knowledge. I considered that Applicant's questionable behavior occurred about four years ago, and that he has positives reviews with his current employer.

On the other hand, Applicant charged to a federal agency 359 hours that he did not work. Regardless of whether he engaged in fraud, Applicant engaged in clearly inappropriate behavior that demonstrated questionable judgment, dishonesty, and his unwillingness to comply with rules and regulations.

Applicant's testimony concerning his lack of training (lack of understanding about his company's policies, and his timesheet responsibilities) lacks credibility when analyzed in light of the evidence as a whole. I find that Applicant continues to minimize and deny his questionable behavior. His lack of credibility adversely impacts on his

claims of increased level of maturity, changed circumstances, and overall mitigating evidence. He failed to mitigate the Guideline E 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
---------------------------	-------------------

Subparagraph 1.a:	Against Applicant
-------------------	-------------------

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant eligibility for a security clearance to Applicant. Clearance is denied.

JUAN J. RIVERA
Administrative Judge