



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



In the matter of:)
)
) ISCR Case No. 15-04340
)
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Department Counsel
For Applicant: *Pro se*

November 8, 2016

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing, (e-QIP) on October 26, 2012. (Government Exhibit 1.) On December 2, 2015, the Department of Defense (DoD) pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, (as amended), issued a Statement of Reasons (SOR) detailing the security concerns under Guideline K for Applicant. The SOR sets forth the reasons why DoD adjudicators could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether clearance should be denied or revoked.

The Applicant responded to the SOR in writing on January 27, 2016, in which he elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on March 2, 2016. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on March 8, 2016, and he submitted a response to DOHA consisting of eight

attachments. The case was assigned to this Administrative Judge for resolution on September 13, 2016. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

FINDINGS OF FACT

The Applicant is 50 years old and never married. He has a Bachelor's of Science degree. He is employed as a Systems Network Security Analyst by a defense contractor and is applying for a security clearance in connection with his employment.

Paragraph 1 (Guideline K - Handling Protected Information. The Government alleges that the Applicant is ineligible for clearance because he engaged in conduct wherein he deliberately or negligently failed to comply with rules and regulations for protecting classified or other sensitive information.

Applicant admits each of the allegations set forth in the SOR under this guideline. He has been employed at a research laboratory at a University since 1995. He has held a security clearance since January 2007. Between February 2012 and July 2015, Applicant committed six separate security violations, by violating the requirements of the National Industrial Security Program Operating Manual, (NISPOM), and by failing to comply with security policy and procedures established by the organization that could result in the loss or compromise of classified information. Following each security violation, Applicant was counseled by his Security Officer or other appropriate company authorities and provided with written reprimands, expectations, re-training, and security checklists. Pursuant to Section 1-302 of the NISPOM, each security violation was properly reported to the Defense Security Service in an Adverse Information Report.

On February 7, 2012, Applicant failed to properly secure Room 211, a closed area of the research laboratory. He was the last person to leave the area. This is a violation of Section 5-306 of the NISPOM, which states admittance to closed areas shall be controlled by locked entrances and secured by an approved combination lock and alarm system.

On March 5, 2014, Applicant failed to properly secure a networking room, a closed area. He was the last person to leave the area. This is violation of Section 5-306 of the NISPOM which states admittance to closed areas shall be controlled by locked entrances and secured by an approved combination lock and alarm system.

On April 9, 2014, Applicant failed to properly secure, a closed area, He was the last person to leave. This is a violation of Section 5-306 of the NISPOM which states admittance to closed areas shall be controlled by locked entrances and secured by an approved combination lock and alarm system.

On November 5, 2014, Applicant failed to properly secure, a closed area. He was the last person to leave the area. This is a violation of Section 5-306 of the

NISPOM which states admittance to closed areas shall be controlled by locked entrances and secured by an approved combination lock and alarm.

On November 12, 2014, Applicant failed to properly secure, a closed area. He was the last person to leave the area. This is a violation of Section 5-306 of the NISPOM which states admittance to closed areas shall be controlled by locked entrances and secured by an approved combination lock and alarm.

On July 24, 2015, Applicant failed to properly secure, a closed area. He was the last person to leave the area. This is a violation of Section 5-306 of the NISPOM which states admittance to closed areas shall be controlled by locked entrances and secured by an approved combination lock and alarm.

Security investigations were conducted following these incidents. It was determined that there was no deliberate intent not to properly secure the locks, and therefore, no deliberate disregard of security requirements per NISPOM 1-304. There was no compromise of classified material suspected.

Applicant explained that his job position includes computer and network support. This requires him to open and secure closed areas more frequently than other employees. Multiple steps are required to properly secure the area. Applicant stated that he has recently been responsible for assisting and supporting the needs of his father, who is in a nursing home, and his mother, who is in an independent living facility. This includes Saturday and Sunday visits, and to be present for doctor appointments and emergency rooms hospital visits. In January 2014, Applicant's father passed away, and in January 2015 his mother passed away. Applicant is the executor of their estates and the job was time consuming, but is now finished.

Applicant believes that his parents' deterioration and ultimate deaths played a role in his security violations. The period between his father's death and his mother's death is when the violations increased. His parents were his only family and he lived with them his entire life. He believes that his grief over their loss was the major influence. To address this situation, on January 11, 2016, he met with a psychologist, arranged through his employee assistance program, who referred him for a neurological evaluation. The evaluation was scheduled for March 23 2016. Applicant had also previously met with his medical physician who suggested the possibility of Attention Deficit Disorder and a sleeping problem. In 2013, Applicant had several visits with a sleep specialist because he was unable to sleep. His sleeping has improved, but he believes that it has not fully been addressed. There is no further evidence in the record to show that a conclusive diagnosis has been made, or what if anything Applicant is doing about it.

A letter of recommendation dated December 31, 2015, from a fellow Network Security Analyst who works with the Applicant, confirms that Applicant's personal life since 2013 has been very difficult. As a single man the effort of juggling his career, his own personal life, and assisting his elderly parents was laborious, time consuming and

distracting. Applicant is a member of the Classified Computing Group, responsible for the majority of classified work at the laboratory. In 2014, he was the sole person responsible for Classified Computing Networking. There was a lot of work that had to be completed by deadlines in November 2014, or jobs would be lost. This was a stressful time for all in this department.

A letter from Applicant's coworker of sixteen years dated April 6, 2016, indicates that he has seen a complete and positive change in the Applicant since his parents died. Applicant has not had any security violations for eight months straight. He has also modified his routine for securing controlled areas by eliminating distractions. His coworker believes that Applicant can be trusted with classified information, and that he should maintain his security clearance. (Response to FORM.)

A memorandum from the Facility Security Officer dated April 4, 2016, confirms that Applicant has had no security violations since July 24, 2015. He also notes that security service personnel have noticed a very significant improvement in his ability to comply with the company's security requirement for properly securing closed areas. (Response to FORM)

POLICIES

Enclosure 2 and Section E.2.2. of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

Guideline K (Handling Protected Information)

33. The Concern. Deliberate or negligent failure to comply with rules and regulations for protecting classified or other sensitive information raises doubt about an individual's trustworthiness, judgment, reliability, or willingness and ability to safeguard such information, and is a serious security concern.

Conditions that could raise a security concern:

35.(g) any failure to comply with rules for the protection of classified or other sensitive information.

35.(h) negligence or lax security habits that persist despite counseling by management.

Condition that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature, extent, and seriousness of the conduct;
- b. The circumstances surrounding the conduct, to include knowledgeable participation;
- c. The frequency and recency of the conduct;
- d. The individual's age and maturity at the time of the conduct;
- e. The extent to which participation is voluntary;
- f. The presence or absence of rehabilitation and other permanent behavioral changes;
- g. The motivation for the conduct;
- h. The potential for pressure, coercion, exploitation or duress; and
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct, which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole-person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination." The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order 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."

CONCLUSIONS

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for clearance may be involved in the mishandling of protected information that demonstrates poor judgment or unreliability.

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him a security clearance.

In this case the Government has met its initial burden of proving that the Applicant has engaged in the repeated mishandling of protected information (Guideline K). The totality of this evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant. Because of the scope and nature of the Applicant's conduct, I conclude there is a nexus or connection with his security clearance eligibility. Considering all of the evidence, the Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation that is insufficient to overcome the Government's case under Guideline K.

The evidence shows that on six separate occasions, Applicant failed to properly secure a closed area, after being the last person to leave the area, in violation of Section 5-306 of the NISPOM. There is no acceptable excuse for these violations. Mere speculation that Applicant may be suffering from a medical condition that has interrupted his sense of concentration is insufficient to show mitigation here. Without sufficient evidence to support this or anything else, these multiple incidents suggest a pattern of recklessness. Disqualifying Condition 35.(g) *any failure to comply with rules for the protection of classified or other sensitive information* and 35.(h) *negligence or lax security habits that persist despite counseling by management* apply. None of the mitigating conditions are applicable. Accordingly, I find against the Applicant under Guideline K, Handling Protected Information.

The number of security violations here raises doubt about Applicant's trustworthiness, reliability, judgment, and willingness to properly safeguard classified or protected information. These violations were not an aberration, but in fact a pattern of conduct that may likely recur in the future.

I have also considered the "whole-person concept" in evaluating the Applicant's eligibility for access to classified information. Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole, support a

whole-person assessment of poor judgment, untrustworthiness, unreliability, a lack of candor, and unwillingness to comply with rules and regulations, and/or other characteristics indicating that the person may not properly safeguard classified information. Applicant at this time does not meet the eligibility requirements for access to classified information. Accordingly, I find against the Applicant under Guideline K (Handling Protected Information).

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the SOR.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.

Subpara. I.a.:	Against the Applicant.
Subpara. I.b.:	Against the Applicant.
Subpara. I.c.:	Against the Applicant.
Subpara. I.d.:	Against the Applicant.
Subpara. I.e.:	Against the Applicant.
Subpara. I.f.:	Against the Applicant.

DECISION

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

Darlene Lokey Anderson
Administrative Judge

