



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



In the matter of:

ISCR Case No. 15-05312

Applicant for Security Clearance

Appearances

For Government: Adrienne Driskill, Department Counsel
For Applicant: *Pro se*

May 17, 2017

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of the Case

On October 2, 2014, Applicant submitted a security clearance application (e-QIP). On March 25, 2016, the Department of Defense 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; 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 September 1, 2006.

Applicant answered the SOR on April 18, 2016, and requested a hearing before an administrative judge. The case was assigned to me on November 4, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 4, 2016, scheduling the hearing for December 5, 2016. The hearing was convened as scheduled. The Government offered Government Exhibits 1 through 5,

which were admitted without objection. Applicant offered Exhibits A through D, which were admitted without objection. Applicant also testified on his own behalf. The record remained opened until close of business on December 30, 2016 to allow the Applicant the opportunity to submit additional supporting documentation. Applicant submitted no additional documents. DOHA received the transcript of the hearing (Tr.) on December 13, 2016.

Findings of Fact

Applicant is 46 years old and married a second time with two children. He has a high school diploma and five years of college. He holds the position of Senior Laser Technician Engineer with a defense contractor. He is seeking to obtain a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline E – Personal Conduct) The Government alleged that Applicant is ineligible for a clearance because he made questionable decisions that indicate poor self-control, lack of judgment, or an unwillingness to abide by rules and regulations, all of which raise questions about his 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 process.

Applicant denied both allegations under this guideline. He completed an Electronic Questionnaire for Investigations Processing dated October 1, 2014. In response to Section 22, which asked if he has ever been charged with any felony offense, he answered, “Yes,” and listed a 1998 arrest for Possession of a Felony Weapon. The Government contends that he failed to disclose additional charges for the following felony offenses: Possession, Buy, Sell Narcotic; Possess a Controlled Substance for Sale, Transport/Sell Controlled Substance; Possess Controlled Substance Paraphernalia; Possess Marijuana Over One Ounce; Possess Marijuana/Hashish for Sale; Sell/Furnish/Etc. Marijuana/Hashish; and Possess Dangerous Drug without Prescription, which appear on his FBI record. (Government Exhibit 2.)

During an interview on November 26, 2014, with an investigator for the DoD, Applicant denied that he was charged with any of the additional offenses listed in the paragraph above. Applicant testified that he comes from a military family. His father is a Vietnam paraplegic veteran, who served as a Corpsman in the United States Marines. Applicant was able to attend school on the GI bill. He has worked with the Veterans Administration Outreach program, as the Outreach Coordinator to help those that have dedicated their lives to protecting our country. Applicant credibly expressed his loyalty and respect for the United States. He also stated that he would never intentionally conceal the truth from the Government at any time.

Applicant stated that on the evening in question, September 5, 1998, he was arrested and detained for Possession of a Dangerous Weapon. Applicant explained

that he received a telephone call from an acquaintance who was stranded and needed a ride, as a result of an altercation he had with his wife. Applicant had not heard from this acquaintance for two years, but since he was a Desert Storm veteran, father of two children, and son of a CHP officer, Applicant decided to pick him up and take him somewhere acceptable. When Applicant picked him up, he noticed that his friend was carrying a duffle bag, but thought nothing of it. Applicant drove his friend to another friend's apartment, but there was no answer at the door. Applicant then noticed that his friend was nervous and agitated and was not right. Applicant pulled the car over the talk with him when a police officer came up behind them. Applicant opened the door to his truck and the officer, who had a flashlight, saw the stick that the Applicant keeps near the side of the driver's door in case of emergency. The stick was a wooden ax handle. The officer told Applicant that it was a felony to carry the ax handle. Applicant apologized to the officer. The officer asked to search the truck, and Applicant willingly obliged, as he had nothing to hide. The truck was searched and the officers found a box of stuff that his friend had put under the seat. Applicant and his friend were arrested and taken to jail, and the truck was towed. Applicant later learned from his attorney that the box contained drug paraphernalia. Applicant was bailed out by his wife that night, and charged with misdemeanor possession of a dangerous weapon. Applicant was not aware of the charges brought against his friend, as he never saw him again. The only charge brought against the Applicant in court was a misdemeanor charge for Possession of a Dangerous weapon. This charge was subsequently dropped upon the Applicant's completion of a four hour court-appointed course regarding making proper life decisions. The charge was dismissed, and Applicant has no criminal record as a result. (Tr. p. 74, and Government Exhibits 3 and 4.)

Applicant further explained that when it came time to complete his security clearance questionnaire, in an effort of extreme cautiousness, he told the whole story to his security officer who told him to be on the safe side and put all of the charges down that pertained to the case, and that the details would be figured out later, since Applicant did not have sufficient time to obtain the records of the incident. Applicant did contact his attorney who told him that he was not charged with anything except Possession of Dangerous Weapon. The other charges that were brought against the Applicant's friend were not brought against the Applicant. (Tr. pp. 35-48.)

Applicant noticed that his FBI report was erroneous and so he contacted the FBI to inform them of the inaccuracies. He was told that in order for the Department of Justice to update the record to correctly reflect the accurate charge brought against the Applicant, he must complete certain paperwork. Applicant filed out the required paperwork to have the changes processed and submitted it for processing. (Applicant's Exhibit B.)

Applicant admits that in answering the questions on his security clearance application, and in response to the investigator during his interview, he made a mistake by not explaining the entire incident and reporting the particular felony charges that were initially made. Applicant contends that he did not conceal any information intentionally, and is sorry about the misunderstanding.

Seven favorable performance appraisals of the Applicant for years 2010 through 2016, show that he is consistently a high performer. (Applicant's Exhibit C.)

Policies

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 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 AG ¶ 2(a) describing 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 the 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." The applicant has the ultimate burden of persuasion to obtain 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. 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 as to 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 relating to the guideline for Personal Conduct is set out in AG ¶ 15:

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:

- (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;
- (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; 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, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

Appellant’s behavior, when considered as a whole, demonstrates that he was not attempting to conceal material information from the Government concerning his police record. He was truthful. In fact, it appears that the information in his FBI record

is erroneous and he has taken the proper steps to have this corrected. Applicant has no other criminal record, besides this incident, nor is there any other evidence of questionable judgment. Applicant was simply trying to be a Good Samaritan by helping someone in need and it ended of bringing him trouble. Furthermore, Applicant no longer has any association with this individual. The above disqualifying conditions have not been established.

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's misdemeanor conviction for Possession of a Dangerous Weapon, occurred over 19 years ago, and he has offered convincing evidence that his behavior is fully corrected. I find that any misbehavior is unlikely to recur, given these facts. As stated above, I find that he did not falsify his security clearance questionnaire.

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 relevant facts and circumstances surrounding this case. Applicant has learned a valuable lesson from this experience, and realizes that he must be very careful with whom he associates. He also knows that he cannot carry an ax handle in his vehicle. He is unlikely to find himself in this situation again. He is not a criminal or a drug user. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Personal Conduct 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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Darlene Lokey Anderson
Administrative Judge