



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 15-06734
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert Blazewick, Esq., Department Counsel
For Applicant: *Pro se*

08/21/2017

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant presented sufficient evidence to mitigate financial considerations security concerns. However, his dishonesty during the security clearance process and other dishonest conduct raises significant security concerns. Clearance is denied.

Statement of the Case

On April 12, 2016, the Department of Defense (DoD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging security concerns under the personal conduct and financial considerations guidelines. On May 31, 2016, Applicant answered the SOR (Answer). He initially requested a decision based solely on the written record, but later requested a hearing.

On May 9, 2017, a date mutually agreed to by the parties, the hearing was held. Applicant testified and the exhibits offered by the parties were admitted into the administrative record without objection.¹ The hearing transcript (Tr.) was received on May 16, 2017, and the record closed on May 23, 2017.

¹ Government Exhibits 1 – 4; Applicant's Exhibits A – H. Applicant's request for a hearing, other prehearing correspondence, the notice of hearing, case management order, and Applicant's email indicating he would not be submitting post-hearing matters are attached to the record as Appellate Exhibits I – V, respectively.

Findings of Fact

Applicant, 48, served in the U.S. military from 1988 to 2008. He deployed over ten times during his military career. He has been employed as a federal contractor since retiring from the military. He has held a security clearance since he was in the military. He was hired as a security specialist by his current employer in 2015, and earns an annual salary of about \$100,000. He holds a bachelor's degree in business from an online school, and is currently pursuing a multi-disciplinary (criminal justice and cyber security) degree. His manager and a company vice president submitted letters, providing their favorable opinions regarding Applicant's trustworthiness and overall character.²

From approximately November 2008 to April 2013, Applicant worked for a large defense contractor, Company A. He was issued a corporate credit card that he could use for business-related travel and expenses. He was provided written guidance regarding the proper use of the corporate credit card.³

In about 2012, Applicant misused his corporate credit card by charging personal expenses to the card. He did not pay the credit card bills and the account became 90-days delinquent. Applicant was then questioned by his former supervisor, the security manager for Company A, about the unauthorized purchases. Applicant lied and blamed his ex-wife, claiming she took his corporate credit card without his knowledge and made the unauthorized purchases. Applicant's former supervisor warned him, both orally and in writing, that he would be fired if a similar incident occurred.⁴

On November 4, 2013, Applicant submitted a security clearance application. One of the questions on the application asked whether he had received a written warning or had otherwise been officially reprimanded for misconduct in the workplace. Applicant did not report the warning he received for misuse of the corporate credit card. In his Answer, Applicant admitted under oath that he deliberately falsified his security clearance application by not disclosing the warning. He goes on to state "Explanation: None to be given I was wrong."

In May 2014, Applicant was interviewed by a security clearance investigator. The investigator asked Applicant the same question that he was originally asked on the application about whether he had ever received a written warning or had otherwise been disciplined for employee misconduct. Applicant lied, denying he received a written warning. When the investigator asked Applicant directly if he had misused his corporate credit card while employed at Company A, Applicant again lied. He told the investigator that he only made authorized purchases and charges.⁵

² Tr. 23-28; Exhibit 1; Exhibits A, B, E.

³ Tr. 53-54; Exhibit 1.

⁴ Tr. 48-70; Exhibits 1 – 2; Answer (Applicant admitted, under oath and in writing, that he received a written warning from his former supervisor for misusing his corporate credit card).

⁵ Exhibit 2 at 6; Tr. 60-61, 69-70.

Applicant, “after a few moments of silence,” then told the investigator a similar lie that he had told his former supervisor. Namely, Applicant claimed that his “ex-girlfriend” had taken his card without his knowledge and made the unauthorized purchases. The investigator pressed Applicant about his story and confronted him with the information she had gathered during her investigation, Applicant continued to provide half-truths and misrepresent the facts, until finally admitting his role in the corporate credit card misuse.⁶

Applicant then went on to claim in the interview that he misused the corporate credit card to purchase everyday necessities because he was experiencing a period of financial turmoil after his ex-wife lost her job. His security clearance application, however, reflects that he took two separate vacations to the Caribbean during the same time frame that he was misusing the corporate credit card.⁷

Applicant also told the security clearance investigator that he did not admit his role in the credit card misuse to his former supervisor because she purportedly did not give him the opportunity to explain the situation. He told the investigator that, even though he knew he was under oath during the security clearance interview, he decided to lie to her at first about misusing the corporate credit card because he was “ashamed and felt he could get away with it.”⁸

At hearing, Applicant admitted the multiple lies and misrepresentations he made to the security clearance investigator during the May 2014 interview. He, however, backtracked on his admission in his Answer to falsifying the security clearance application. He now claims to have not receive either written or oral warning for misusing the corporate credit card.⁹

On November 26, 2013, a few days after submitting his security clearance application, Applicant was arrested for driving under the influence (DUI). His blood alcohol was measured at a .14, or nearly twice the legal limit. He pled guilty, but the court withheld imposition of judgment on condition Applicant complete probation and pay all assessed fines and costs. Applicant was on probation for about 18 months. He completed all terms of his probation, including alcohol counseling, and complied with all other terms imposed by the court.¹⁰ No evidence of any other alcohol-related issues was presented.

⁶ Exhibit 2 at 6-7; Tr. 60-70.

⁷ Compare Exhibit 2 at 6-7, with, Exhibit 1 at 24-28 and Tr. 49-50.

⁸ Exhibit 2 at 7. Applicant was sent the summary of his security clearance interview (Exhibit 2). He provided updated information regarding his drunk driving conviction and finances, and confirmed the accuracy of the relevant portions of the interview noted herein detailing the extensive lies he provided the investigator.

⁹ Tr. 36-38, 50-53, 58-61, 69-70. Applicant also claimed that he misused the credit card because of financial problems related to the high cost of moving his family to a location closer to where he was working. He did not mention or attribute his past financial problems to his ex-wife losing her job, as he had claimed during the May 2014 security clearance interview.

¹⁰ Tr. 33-36, 43-47; Exhibit 2 at 3-4; Exhibit 3; Exhibits F.

During his May 2014 security clearance interview, Applicant stated that he “has not told anyone about his [DUI] arrest to include his security officer.”¹¹ At hearing, Applicant claimed that the reason he did not report the DUI arrest to his facility security officer (FSO) was because his criminal defense attorney advised him not to as the criminal charge was still pending in court. He also stated that he was working for Company B at the time and he did not have an FSO to report the DUI to. He claimed that he informed his former supervisor at Company B about the DUI.¹² Applicant did not submit documentation to corroborate his testimony. It is unclear from the record, why Applicant would state in his sworn written Answer that “I should have told my previous FSO” about the DUI if, as he testified, he did not have an FSO to report the adverse information.¹³

During his May 2014 security clearance interview, Applicant was confronted by the investigator with a number of delinquent debts appearing on his credit report. He submitted documentation showing that the two delinquent debts listed on the SOR, totaling less than \$4,000, have been satisfied.¹⁴ No evidence was presented that Applicant has incurred other delinquent debt.

Law, Policies, and Regulations

This case is decided under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented on June 8, 2017, through Security Executive Agent Directive 4 (SEAD-4).¹⁵

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Instead, persons are only eligible for access to classified information “upon a finding that it is clearly consistent with the national interest” to authorize such access. E.O. 10865 § 2.

When evaluating an applicant's eligibility for a security clearance, an administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner,

¹¹ Exhibit 2 at 5.

¹² Tr. 34-35, 43-44. Applicant worked for Company B from November 2013 until June or July 2014. It is unclear from the record whether he supposedly informed his former supervisor about the DUI before or after his May 2014 security clearance interview. Answer, response to 1.f.

¹³ Answer, response to 1.f. Applicant's testimony seems highly suspect as he did not disclose this information during two separate clearance interviews or in his Answer. Instead, he waited until his hearing.

¹⁴ Exhibits C, D, G, H.

¹⁵ ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003) (security clearance decisions must be based on current DoD policy and standards). I considered the previous version of the adjudicative guidelines that were in effect at the time the SOR was issued, and my decision would have been the same.

considering all available and reliable information, in arriving at a fair and impartial decision. AG ¶ 2.

Department Counsel must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14.¹⁶ Applicants are responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven . . . and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15.

Administrative Judges must remain fair and impartial, and conduct all hearings in a timely and orderly manner. Judges must carefully balance the needs for the expedient resolution of a case with the demands of due process. Therefore, an administrative judge will ensure that an applicant: (a) receives fair notice of the issues, (b) has a reasonable opportunity to address those issues, and (c) is not subjected to unfair surprise. Directive, ¶ E3.1.10; ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014).

In evaluating the evidence, a judge applies a “substantial evidence” standard, which is something less than a preponderance of the evidence. Specifically, substantial evidence is defined as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” Directive, ¶ E3.1.32.1.

Any doubt raised by the evidence must be resolved in favor of the national security. AG ¶ 2(b). See also SEAD-4, ¶ E.4. Additionally, the Supreme Court has held that responsible officials making “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

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. 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 an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

¹⁶ See also ISCR Case No. 15-05565 (App. Bd. Aug. 2, 2017) (favorable decision reversed because Department Counsel failed to present evidence to substantiate allegation that was denied by applicant); ISCR Case No. 14-05986 (App. Bd. May 26, 2017) (rejecting Department Counsel's argument that an adverse decision can be based solely on non-alleged conduct).

Analysis

Guideline E, Personal Conduct

The security clearance process relies on the honesty and candor of all applicants, and starts with the answers provided in the security clearance application. Dishonesty during the security clearance process raises a serious security concern that is explained at 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 or sensitive information.

Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will *normally result in an unfavorable national security eligibility determination* . . . refusal to provide full, frank, and truthful answers to lawful questions of investigators . . . in connection with a personnel security or trustworthiness determination.¹⁷

In assessing Applicant's case, I considered all applicable disqualifying and mitigating conditions, including the following:

AG ¶ 16(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 national security eligibility or trustworthiness, or award fiduciary responsibilities;

AG ¶ 16(b): deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, . . . involved in making a recommendation relevant to a national security eligibility determination, or other official government representative;

AG ¶ 16(c): credible adverse information in several adjudicative issue areas . . . 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 individual may not properly safeguard classified or sensitive information;

¹⁷ See also SEAD-4, Appendix A, ¶ 2(i) ("the adjudicative process is predicated upon individuals providing relevant information pertaining to their background and character for use in investigating and adjudicating their national security eligibility. Any incident of intentional material falsification . . . raises questions about an individual's judgment, reliability, and trustworthiness and may be predictive of their willingness or ability to protect the national security.")

AG ¶ 17(a): the individual made prompt, good-faith efforts to correct the . . . falsification before being confronted with the facts;

AG ¶ 17(b): the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

AG ¶ 17(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;

AG ¶ 17(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 contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

AG ¶ 17(f): the information was unsubstantiated or from a source of questionable reliability.

Applicant deliberately misused his corporate credit card in violation of his employer's policy. When asked about it, he denied his role and concocted a story blaming his ex-wife. He continued to lie about his misuse of the corporate credit card and the discipline he received from his former employer during the security clearance process. In his Answer, Applicant appeared to finally accept responsibility for his past misconduct and the lies he told about it during the security clearance process. But, at hearing, Applicant started to back track on his admissions. He began minimizing and making claims that were not credible and were contradicted by his own prior sworn statements.

Beyond the misuse of the corporate credit card and dishonesty during the security clearance process, the evidence also shows that Applicant cannot be trusted to self-report adverse information. Notably, he failed to report the DUI when it occurred.¹⁸ His belated excuse for not self-reporting the adverse information to his FSO was not supported by the evidence and is unworthy of belief. AG ¶ 16(a) – 16(c) apply. None of the mitigating conditions apply. Applicant's dishonesty during the security clearance process and other dishonest conduct remain a security concern.¹⁹

¹⁸ In ISCR Case No. 12-04813 (App. Bd. July 31, 2015), the Board, in addressing a case where an applicant failed to report his criminal arrest to his FSO, explained the serious security raised by such failure to self-report adverse information: "Willingness to advise an employer of one's own security significant conduct or circumstances is a signal responsibility of those with access to classified information. Failure to comply with his duty raises concerns about the person's fitness for a clearance." *Id.* at 4.

¹⁹ The SOR also alleges Applicant's DUI as a security concern under Guideline E. This one-time incident occurred nearly four years ago and the record is devoid of any evidence of other alcohol-related problems.

Guideline F, Financial Considerations

A person in financial distress is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. See *generally* AG ¶ 18 (explaining security concern). Here, Applicant lived beyond his means for some time and engaged in (arguably) criminal conduct to generate funds. Of note, he took multiple vacation trips to the Caribbean while, at the same time, using his corporate credit to make unauthorized purchases. He incurred some delinquent debt, which was not satisfied until relatively recently. However, at present, Applicant's financial situation appears to be stable and the security concern raised by his dishonest financial conduct are sufficiently covered under Guideline E. Therefore, the Guideline F concern is resolved in Applicant's favor.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the whole-person factors listed at AG ¶ 2(d). I hereby incorporate my above analysis and highlight some additional whole-person factors.

Applicant served honorably in the military, including multiple overseas deployments. He has held a security clearance for a long time. Since retiring from the military, Applicant has worked for the federal government as a contractor and his current employer seems pleased with his work. However, this and other favorable record evidence is insufficient to mitigate the heightened security concerns raised by Applicant's dishonesty during the security clearance process. His conduct raises unmitigated concerns about his honesty, reliability, and trustworthiness. Overall, the record evidence leaves me with significant doubts as to Applicant's eligibility for a security clearance.²⁰

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 (Personal Conduct):	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b – 1.f:	Against Applicant
Paragraph 2, Guideline F (Financial Considerations):	FOR APPLICANT
Subparagraphs 2.a – 2.b:	For Applicant

The true security concern raised by the DUI is Applicant's failure to report it to his FSO when it occurred. The security concern raised by this failure to self-report is sufficiently covered by a separate SOR allegation. Accordingly, SOR 1.a, alleging the DUI, is decided in Applicant's favor.

²⁰ I considered the exceptions in SEAD-4, Appendix C, but none are warranted in this case. See SEAD-4, ¶ E.3 and Appendix A, ¶ 2(h); *contrast with* ISCR Case No. 10-03646 at 2 (App. Bd. Dec. 28, 2011) (under previous version of the guidelines, judges had "no authority to grant an interim, conditional or probationary clearance.")

Conclusion

In light of the record evidence, it is not clearly consistent with the interest of national security to grant Applicant continued eligibility for access to classified information. Applicant's request for a security clearance is denied.

Francisco Mendez
Administrative Judge