

open until November 3, 2016, to allow applicant to submit additional evidence, but none was received. DOHA received the transcript of the hearing (Tr) on October 28, 2016. Based upon a review of the pleadings, exhibits, and the testimony of Applicant, eligibility for access to classified information is denied.

Findings of Fact

After a complete and thorough review of the evidence in the record discussed above, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 60 years old. He is unmarried and he has no children. Applicant received a PhD in Aerospace Engineering in 1984, and a Master's degree in Engineering in 1978. Applicant is employed by a defense contractor as a Senior Scientist, and he seeks a DoD security clearance in connection with his employment in the defense sector.

Guideline E - Personal Conduct

The Government alleges in this paragraph that Applicant is ineligible for clearance because he engaged in conduct that exhibited questionable judgement, unreliability, unwillingness to comply with rules and regulations, and untrustworthiness.

1.a. It is alleged in the SOR that on approximately six to eight occasions from the 1990s to at least 2010, Applicant removed all of his clothes while in an outdoor public place. Applicant admitted this allegation in his RSOR. At the hearing, Applicant reiterated what he had written on his RSOR that this behavior last occurred in October 2010, after his father died. He became a caregiver for his mother, and while he was collecting things at his parent's house, he felt the walls closing in on him. He went outside to a wooded section adjacent to the backyard, and he removed his clothes. He then began walking around on the surrounding golf course, until he finally returned to his entry point and put his clothes back on. This occurred around midnight, and he indicated there were no other people in the vicinity. (Tr at 20-21.)

He estimated before 2010 he had last engaged in similar conduct five or six years earlier. He described that on that earlier event, which took place in his condominium, "I took off my clothes, walked down a few flights, came back up, put my clothes back on and left." This happened at around 11 at night, and he indicated that no one was around during this incident. Applicant concurred with the SOR allegation that he engaged in this conduct from six to eight times, and his goal was always that no one would see him while he was nude. He further stated that he did not want to engage in this conduct at such places as nudist colonies or beaches, where it was legal, because he did not want to be seen. Applicant testified that he now realizes the potential repercussions of his conduct, and he does not intend to engage in this conduct in the future. The information about Applicant's conduct was first revealed when he was undergoing a polygraph examination. (Tr at 21-27.) Applicant discussed several

theories, but he was not able to provide a definitive explanation for his conduct. (Tr at 32-33.)

During his testimony, Applicant testified that he has never received any counseling or therapy for this conduct. Applicant also conceded that neither his family, friends, girlfriend, or co-workers know about his past conduct that is the subject of the security clearance hearing. The record was held open after the hearing to allow Applicant to tell some of these people about the concerns raised in the SOR and to have these people submit letters explaining that they were now aware of these allegations. These letters could potentially eliminate or lessen the possibility that he could be subject to coercion. (Tr at 35-39.) No post-hearing letters or other evidence was submitted.

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 useful 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 AG ¶ 2 describing the adjudicative process. The administrative judge's over-arching 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. 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 as to obtaining a favorable clearance decision.

A person who applies for access to classified information seeks to enter 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 protect or 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 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 judgement, 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.

In reviewing the disqualifying conditions under Guideline E, I conclude that Applicant's history of inappropriate, and potentially illegal conduct as reviewed above, is a concern to the Government under Guideline E. I find that Applicant's conduct does apply under ¶ 16 (d), which concerns “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 judgement, untrustworthiness, unreliability, . . . unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information.” I also find that Applicant's failure to reveal his conduct to any other person, has made him potentially vulnerable to exploitation, manipulation or duress under ¶ 16 (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.”

In reviewing the mitigation conditions, I considered that Applicant's conduct occurred over the span of many years, and Applicant could not provide a reasonable explanation for it. I also considered that Applicant has not obtained counseling to help him curb this conduct, nor has he taken any positive steps to reduce or eliminate vulnerability to exploitation, manipulation or duress. For these reasons, I find that no

mitigating condition under ¶ 17 is applicable in this case. I, therefore, resolve Guideline E against Applicant.

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. Based on all of the reasons cited above as to why no mitigating conditions apply under Guideline E, I find that the record evidence leaves me with significant questions and doubts as to Applicant's eligibility and suitability for a security clearance under the whole-person concept. For all these reasons, I conclude Applicant has not mitigated the security concerns under the whole-person concept.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ 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 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.

Martin H. Mogul
Administrative Judge