



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-01105

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

11/02/2017

Decision

KILMARTIN, Robert J., Administrative Judge:

Applicant did not mitigate the security concerns under Guideline E, personal conduct. Applicant's eligibility for access to classified information is denied.

Statement of the Case

On May 18, 2017, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline E, personal conduct. Applicant timely answered the SOR and elected to have his case decided on the written record in lieu of a hearing.

Department Counsel submitted the Government's file of relevant material (FORM) on July 4, 2017. Applicant received the FORM on August 3, 2017 and had 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the Government's evidence, and he provided a one-page response to the FORM. The Government's evidence, identified as Items 1 through 4, is admitted into evidence without objection. The case was assigned to me on October 23, 2017.

Findings of Fact¹

Applicant is 57 years old. He graduated from high school in 1978. Applicant has been employed as a quality inspector by a federal contractor since February 2013. Applicant had been employed by the same federal contractor from 1988 to 2010. He was laid off in February 2010 and unemployed for one year before being re-hired. He reports no military service and no previous security clearance. Applicant was married the first time from 1988 to 1991, and from 2004 to 2012. He has one adult son. Applicant completed a Security Clearance Application on February 24, 2016 (SCA).²

In his June 5, 2017 Answer to the SOR, Applicant admitted both allegations in the SOR. SOR ¶ 1.a alleges that Applicant was a member and former president of a chapter of the Pagan Outlaw Motorcycle Club ("POMC"), and he was associated with other members of the club who were involved in criminal activity. He was president of the club for one year, and a member of the club from about the mid- 1990s to at least 2004. In his Answer, Applicant stated "I admit to being a member but never got in any trouble during that time. I do not and have not done or sold any drugs or illegal activities."

An FBI report dated June 18, 2016, referenced Applicant in an Organized Crime Drug Enforcement Task Force (OCDETF) investigation initiated in July 1997. The report states that it was determined that Applicant was the president of POMC, Pittsburgh Chapter. Further, "the investigation showed [Applicant] may have participated in the selling of stolen motorcycle parts and may have also influenced other members to participate in illegal activities such as theft and assault of other members of the organization."³ The FBI found that the POMC is one of the predominant motorcycle clubs in the United States and the Pagans have been involved in weapons violations, assaults, extortions, murders, and other offenses, including the manufacture and distribution of illegal drugs.

SOR ¶ 1.b alleges that Applicant falsified material facts during a personal subject interview on January 26, 2017, when he denied membership with the POMC until further questioning when the Office of Personnel Management (OPM) investigator confronted him with this information. In his clearance interview, Applicant initially denied involvement with POMC even after the OPM investigator confronted him saying "some people have said that I was part of the club."⁴ Applicant was asked if he was ever president of the club, and he denied it initially. After the OPM investigator persevered, Applicant eventually admitted his involvement including his stint as president of a

¹ Unless stated otherwise, the source of the information in this section is Applicant's February 24, 2016 Security Clearance Application (SCA) (Item 2) and the summary of his personal subject interview conducted on January 22, 2017. (Item 3)

² Item 2.

³ Item 4.

⁴ Item 3, p. 3.

chapter of the POMC. He denied involvement in any illegal activity. He stated that he did not initially respond truthfully to the questions because he was afraid it would be held against him and affect his eligibility for the clearance. I conclude that he had the specific intent to deceive.

In his response to the FORM, Applicant stated that he made a “stupid mistake as a young man that should not have an impact on my life now. Yes, I was so embarrassed and I should not have lied. I am a different man now. I love my job and I am totally loyal” Further, Applicant stated that he has never been arrested and he has no criminal record. His request for a second chance would be more availing if he had disclosed his earlier mistakes in belonging to POMC.

Policies

This action was taken under Executive Order (EO) 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 promulgated in Security Executive Agent Directive 4 (SEAD 4), effective within the DOD on June 8, 2017.⁵

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, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the adjudicative process is an examination of a sufficient period and a careful weighing of a number of variables of an individual’s life to make an affirmative determination that the individual is an acceptable security risk. This is 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 national security eligibility 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.

⁵ Although I have decided this case under the adjudicative guidelines (AG) effective June 8, 2017, I also considered the case under the former AG effective September 1, 2006, and my decision would be the same under either AG.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security 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 that an 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 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 for personal conduct is set out in AG ¶ 15, as follows:

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

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are applicable:

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative;

(e) personal conduct, or concealment of information about one’s conduct, that creates a vulnerability to exploitation, manipulation, or duress by a

foreign intelligence entity or other individual or group. Such conduct includes:

- (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing;
- (2) while in another country, engaging in any activity that is illegal in that country;
- (3) while in another country, engaging in any activity that, while legal there, is illegal in the United States; and

(g) association with persons involved in criminal activity.

The operative word in the POMC organization's title is outlaw. It is renowned for not following rules and regulations. Affiliation with such an organization raises questions about an Applicant's reliability and trustworthiness and ability to protect classified or sensitive information. However, this concern may have been mitigated had Applicant simply disclosed it in his SCA or to the OPM investigator. Since Applicant admitted the allegations, his intent to provide false information as alleged at SOR ¶ 1.b, is clear. Applicant was reluctant to provide truthful answers to the OPM investigator because he feared it might affect his eligibility for a security clearance. The security clearance process requires Applicants to be truthful, candid, and cooperative. It should not be like pulling teeth for the OPM investigator to extract accurate information. I conclude that he had the specific intent to deceive when he repeatedly tried to conceal his involvement with POMC from the OPM investigator. There are no applicable mitigating conditions.

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(d):

- (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. I have incorporated my comments under Guideline E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline.

Applicant has not met his burden of persuasion. The record evidence leaves me with serious questions and doubts as to Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising under Guideline E, personal conduct.

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
Subparagraphs 1.a to 1.b:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Robert J. Kilmartin
Administrative Judge