



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 17-03410
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicholas Temple, Esquire, Department Counsel
For Applicant: *Pro se*

04/19/2018

Decision

HOGAN, Erin C., Administrative Judge:

On October 16, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline E, Personal Conduct, and Guideline F, Financial Considerations. 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 within the Department of Defense on June 8, 2017.

On October 23, 2017, Applicant answered the SOR and requested a decision on the administrative record. Department Counsel prepared a File of Relevant Material (FORM) on November 6, 2017. Applicant received the FORM on November 28, 2017. Applicant had 30 days to submit a response to the FORM. He did not submit a response to the FORM. The case was forwarded to the Hearing Office on January 22, 2018, and assigned to me on April 10, 2018. Based upon a review of the pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant is a 39-year-old employee of a Department of Defense (DoD) contractor seeking to maintain a security clearance. He has worked for the DoD contractor since October 2016. He previously worked as a DoD civilian employee from March 2002 to October 2016. His highest level of education is a master's degree. He is married and has two children. (Item 2, Item 3)

Guideline E, Personal Conduct:

Under Personal Conduct, it is alleged Applicant resigned from his civil service position with Command A in lieu of being fired. (SOR ¶ 1a: Item 11; Item 13) Between 2005 to 2015, Applicant created and submitted approximately 124 fraudulent travel vouchers resulting in a loss to the Government in excess of \$70,000. (SOR ¶ 1.b: Item 7; Item 9, Item 10; Item 11). In 2015, he was disciplined for traveling internationally without notifying his employer. (SOR ¶ 1.c: Item 6). In 2014, Applicant was issued a written warning for downloading pornographic material on his government-issued computer. (SOR ¶ 1.d: Item 5).

Applicant was a civilian employee at Command A. His job required for him to be on temporary duty at Command B. He apparently only reported to Command A on Monday mornings for meetings. After the meetings, he would travel to Command B and work on Monday afternoon and Tuesday through Friday. Applicant was required to file travel vouchers within the Defense Travel System (DTS). In order to file reimbursements for lodging, Applicant needed to provide receipts. When he was on temporary duty at Command B, Applicant did not stay at a commercial hotel. He stayed with Mr. X., his friend who worked at Command B. Applicant and Mr. X. created a receipt for staying at Mr. X's house which was referred to as a room rental place. In other words, the receipt made it appear to be a place of business rather than Mr. X's private residence. Applicant would claim \$120.00 each night for per diem. He would create a manufactured receipt. Applicant and Mr. X. created a joint PayPal account. The reimbursed lodging expenses would be deposited into this account. Applicant would take half of the reimbursement (\$60 for each night) and Mr. X. was paid \$60 a night for the nights Applicant was staying at Mr. X's residence.

Applicant falsified lodging receipts between November 2006 to October 2015. He submitted the falsified receipts with his travel voucher for reimbursement. He would receive reimbursement for lodging expenses he did not incur. A total amount of approximately \$70,000. (Item 13)

In 2015, Command A management began to question Applicant's extensive travel. A criminal investigation was initiated. It was discovered that the address listed on Applicant's lodging receipts was not a place of business, but a private residence owned by Mr. X. On November 19, 2015, Mr. X. was interviewed. He stated that he initially let Applicant stay at his residence for \$60 a night. The payments were arranged to go to Mr. X's PayPal account. Applicant had access to this account and would be reimbursed

for half of the repayment for lodging. Mr. X. initially helped Applicant create the receipt, but he had not seen a receipt in five years. (Item 13)

At the conclusion of the investigation, Applicant's manager served Applicant with a Notice of Proposed Removal on October 3, 2016. Applicant had an opportunity to respond to the Notice of Proposed Removal. On October 11, 2016, Applicant resigned his position at Command A rather than fight the removal action. (Item 13)

In his response to the SOR, Applicant claims that he did not believe that he was doing anything fraudulent. He claims he had permission from his supervisor to stay at a furnished place and it is documented in all of his travel orders. He does not believe he cost the government a loss in excess of \$70,000 because instead of the government paying a "Holiday Inn" for his stays, the government paid a friend, who in turn shared the profits with him. He admits this was poor judgment. He equivocated that instead of collecting hotel points, he could benefit monetarily. He admits it was a gross error on his part. (Item 2)

During his employment with Command A, Applicant received a written counseling for accessing pornography on his government work computer on May 9, 2013; May 29, 2013; November 1, 2013; and November 21, 2013. Applicant's actions constituted misuse of government property and Command A's Acceptable Use Policy. Applicant acknowledged the written counseling on June 30, 2014. (Item 5) In his response to the SOR, Applicant admits that he accessed his personal e-mail at work. He claims he could check an e-mail, delete it, and the next e-mail would automatically load. Applicant claims he did not view the pornographic images at work. He claims the pornographic images were downloading to the company's server. Applicant admits it was a mistake on his part. He made it sure it did not reoccur. He stopped checking his personal e-mail at work and blocked the pornographic e-mails. (Item 2; Item 5)

Applicant was also alleged to have been counseled about his failure to report foreign travel to his security officer. From August 28, 2015 to September 13, 2015, he traveled to China, Hong Kong, Bali, and Singapore without reporting the trip. (Item 4; Item 6) In his response to the SOR, Applicant admits to the allegation, but then claims he honestly does not remember taking the trip. He does not recall being disciplined about this incident. There is a JPAS entry indicating Applicant took this trip overseas without reporting it. There is no evidence showing that he was counseled about the incident. (Item 2; Item 6)

Applicant is alleged to have falsified his answers to several questions on his e-QIP application which was signed by him on February 2, 2017. When asked in Section 13A Employment Activities, regarding his employment with Command A "For this employment, in the last seven (7) years have you received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as a violation of security policy?" Applicant listed that he was "Suspended while under investigation for violating travel policies. End result, was not charged for anything." When further asked, "Do you have another instance of discipline or warning to provide?"

Applicant answered, “No.” He did not list that he was disciplined/warned for traveling internationally without notifying his employer (SOR ¶ 1.c) or that in 2014, he was issued a written warning for downloading pornographic material on his government-issued computer. (SOR ¶ 1.d) (SOR ¶ 1.e: Item 3; Item 5; Item 6)

On the same February 2, 2017, e-QIP application, Applicant is alleged to falsified Section 20C, Foreign Travel, when answering, “no” to the question “Have you traveled outside the U.S. in the last seven (7) years?” It is alleged that Applicant should have listed he traveled internationally on multiple occasions since 2010. (SOR ¶1.f: Item 3)

Applicant denied deliberately falsifying his e-QIP (SOR ¶¶ 1.e, 1.f). He denies the allegation in SOR ¶ 1.e because he did not remember. He claims he openly shared this information with the investigator during his interview. He denies the allegation in SOR ¶ 1.f. He provided a copy of his e-QIP which he printed for his records. It is dated February 24, 2017. (Item 2A). He listed all of his foreign travel in response to section 20C on this e-QIP application. Applicant states he has traveled to over 49 countries. He is proud of his foreign travel and would never hide it.

Guideline F, Financial Considerations:

The conduct alleged in SOR ¶¶ 1.a and 1.b was cross-alleged under the financial considerations guideline.

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 the adjudicative process. The administrative judge’s over arching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(a), 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 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.

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 applicant or proven by Department Counsel. . . .” The applicant 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 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 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).

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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during the national security or adjudicative processes.

The following disqualifying conditions potentially apply to Applicant’s case:

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 employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

AG ¶ 16(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 individual may not properly safeguard classified or sensitive information; and

AG ¶ 16(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. . . .

AG ¶ 16(a) applies with regard to Applicant's omission of being issued a written warning for downloading pornographic material on his government-issued computer in 2014. I find Applicant's omission was deliberate. It does not apply with respect to Applicant's alleged discipline/warning for traveling internationally without notifying his employer. While there is convincing evidence the Applicant travelled to China, Hong Kong, Bali and Singapore without notifying his chain of command/employer, there is no evidence that any action was taken to discipline Applicant for this incident.

I find for Applicant regarding the falsification allegation in SOR ¶ 1.f. There are two e-QIP applications in the record evidence (Item 2A and Item 3). Applicant provided a copy of Item 2A. He completed this e-QIP on February 24, 2017. It consisted of 81 pages. He listed all of his foreign travel on this e-QIP. Item 3 was dated February 27, 2018. It consisted of 31 pages. It did not list the foreign travel. There is no explanation for the missing pages. I find Applicant did not intentionally omit his foreign travel on the February 27, 2018 e-QIP application. For some reason, the information was deleted. There is no evidence attributing the deletion to Applicant.

AG ¶ 16(c) applies. Applicant's actively conspired with Mr. X to defraud the United States government of approximately \$70,000 in lodging expenses that were not incurred. He created false receipts each time he submitted a travel voucher for his expenses to be reimbursed. He misled the government by claiming the private residence where he was staying was a room rental place. This occurred over a nine-year period. Applicant benefited at least \$70,000 for expenses which he was not entitled to receive. This conduct as well as Applicant's failure to notify his employer of international travel and his downloading pornography on his government computer raise questions about Applicant's judgment, trustworthiness, reliability, honesty, and his willingness to comply with rules and regulations. This, in turn, raises questions about Applicant's ability to handle classified information.

AG ¶ 16(d) applies because Applicant's is vulnerable to exploitation and coercion because if his past behavior were to be made available to the general public, his activities would affect his personal, professional, and community standing.

Under Guideline E, the following mitigating conditions potentially apply in Applicant's case:

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

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 is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

None of the mitigating conditions apply. Applicant's behavior was deliberate and serious. The fraudulent scheme occurred over a lengthy period of time. Applicant has mentioned on his e-QIP that no charges were brought. Regardless, there was sufficient evidence to conclude Applicant committed the underlying conduct. Applicant did not mitigate the security concerns raised under personal conduct.

Guideline F: Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 notes several disqualifying conditions that could raise security concerns. The disqualifying condition that is relevant to Applicant's case is:

AG ¶ 19(d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust.

Over a nine-year period, Applicant submitted fraudulent travel vouchers, claiming reimbursement for funds that he was not entitled to receive. He created false receipts

for a fictional room rental business in order to file false claims for lodging through DTS. He conspired with Mr. X to create an account where DTS could send the reimbursement of the funds. He was repaid over \$70,000 for expenses he did not incur and was not entitled to receive. His actions were deceptive and fraudulent.

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

AG ¶ 20 includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 20(a) does not apply because of the length and extent of Applicant's fraudulent conduct. There is no indication he repaid or provided restitution to the government. Applicant's nine year history of filing fraudulent travel vouchers continues to raise questions about his reliability, trustworthiness, and good judgment.

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. Questions remain about Applicant's

trustworthiness and reliability. Security concerns under personal conduct and financial considerations are not mitigated.

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 -1.b, 1.d, 1.e:	Against Applicant
Subparagraphs 1.c, 1.f:	For Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraph 2.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 security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

ERIN C. HOGAN
Administrative Judge