



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



In the matter of:

[NAME REDACTED]

Applicant for Security Clearance

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ISCR Case No. 18-00556

Appearances

For Government: Erin P. Thompson, Esq., Department Counsel
For Applicant: *Pro se*

09/27/2018

Decision

MALONE, Matthew E., Administrative Judge:

Applicant did not mitigate the security concerns about his deliberate falsification of answers to questions in his security clearance application or his false statements to a government investigator during a personal subject interview (PSI). Applicant's request for a security clearance is denied.

Statement of the Case

On August 4, 2017, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for his employment with a defense contractor. After reviewing the results of the ensuing background investigation, adjudicators for the Department of Defense (DOD) could not determine that it is clearly consistent with the national interest for Applicant to have access to classified information.¹

¹ Required by Executive Order 10865, as amended. See also Directive, Section E3.1.1.

On April 17, 2018, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns about personal conduct (Guideline E). Applicant timely responded to the SOR and requested a decision without a hearing. On May 30, 2018, Department Counsel issued a File of Relevant Material (FORM)² in support of the SOR. Applicant received the FORM on June 5, 2018, and was notified that he had 30 days to file a response to the FORM, including any objections to the materials relied on by the Government. He did not submit any additional information, and the record closed on July 5, 2018. The case was assigned to me on September 19, 2018.

Findings of Fact

Under Guideline E, the SOR alleged that Applicant deliberately made false official statements when, in response to questions in e-QIP Section 12 (Where You Went to School), he claimed to have received an associate's degree in May 2008, when in fact, he had not earned that degree (SOR 1.a). It was also alleged that during a PSI on November 8, 2017, Applicant attempted to mislead a government investigator when he affirmed the false answer he had given in his e-QIP (SOR 1.b). In response to the SOR, Applicant admitted, without explanation, both allegations. (FORM, Items 1 and 2) In addition to the facts established by Applicant's admissions, I make the following findings of fact.

Applicant is 39 years old. He and his wife have been married since August 2007, and they have two children, ages 7 and 4. Between August 2006 and May 2008, Applicant attended a local community college to study for an associate's degree in an information technology (IT) field. He did not complete his studies for that degree, falling short by two or three courses because he ran out of money for tuition. Applicant had told his wife, however, that he had obtained his degree and she was very proud of him for doing so. When Applicant was completing his e-QIP, his wife helped him complete the automated questionnaire. In Section 12, he answered "yes" and listed an associate's degree because his wife could see his answers and he did not want her to know he had been untruthful to her. He intended to correct the answer before submitting it, but he never did. (FORM, Items 3 and 4)

Before Applicant's PSI in November 2017, the government investigator had received information from Applicant's community college pursuant to a routine records check. That information showed Applicant had not received a degree. Applicant was asked about his incorrect e-QIP answer and initially affirmed his claim of having received a degree. He indicated there must be some mistake and that he did not know why school records did not show that he had earned a degree. It was not until the investigator suggested that a check of school records might contradict Applicant's claim that he admitted intentionally providing a false answer. (FORM, Items 4 and 5)

² See Directive, Enclosure 3, Section E3.1.7. The FORM included five exhibits (Items 1 – 5) proffered in support of the Government's case.

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,³ and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(d) of the new guidelines. Commonly referred to as the “whole-person” concept, those factors are:

(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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁴ for an applicant to either receive or continue to have access to classified information. Department Counsel must produce sufficient reliable information on which DOHA based its preliminary decision to deny or revoke a security clearance for an applicant. Additionally, Department Counsel must prove controverted facts alleged in the SOR.⁵ If the Department Counsel meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.⁶

Because no one is entitled to a security clearance, an applicant bears a heavy burden of persuasion to establish that it is clearly consistent with the national interest for the applicant to have access to protected information.⁷ A person who has access to such information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, there is a compelling need to ensure each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the nation's interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of the Government.⁸

³ Directive, 6.3.

⁴ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁵ Directive, E3.1.14.

⁶ Directive, E3.1.15.

⁷ See *Egan*, 484 U.S. at 528, 531.

⁸ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

Analysis

Personal Conduct

The facts established through the Government's information, and by Applicant's statements and admissions, reasonably raise a security concern about his personal conduct. That security concern is stated 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, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

Applicant deliberately provided false information in his e-QIP, and he deliberately made false statements to a government investigator in his PSI. This information requires application of the following AG ¶ 16 disqualifying condition:

(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 national security eligibility or trustworthiness, or award fiduciary responsibilities; and

(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.

I also have considered the following pertinent AG ¶ 17 mitigating conditions:

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

(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; and

(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.

None of these mitigating conditions apply. Rather than correct his omissions, Applicant persisted in his misrepresentations well into the course of his PSI three months later. It was not until the prospect of a records check at the school was made apparent to him that he admitted his actions. Further, there is nothing minor about Applicant's willingness to provide false and misleading answers to fundamental and reasonable questions from the government. Applicant has not presented any information that shows why his omissions should not cast doubt on his judgment, reliability and trustworthiness. The security concerns under this guideline are not mitigated.

I have evaluated this record and applied the appropriate adjudicative factors under Guideline E. I also have considered the whole-person factors listed in AG ¶ 2(d). This record does not present sufficient information to resolve the doubts raised by the Government's information about Applicant's suitability for access to classified information. Because protection of the interests of national security is the principal focus of these adjudications, those doubts must be resolved against the Applicant.

Formal Findings

Formal findings 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: Against Applicant

Conclusion

In light of all available information, it is not clearly consistent with the interests of national security for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

MATTHEW E. MALONE
Administrative Judge