



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



In the matter of:)
)
) ISCR Case No. 18-00636
)
Applicant for Security Clearance)

Appearances

For Government: Andrea M. Corrales, Esquire
For Applicant: *Pro se*

10/31/2018

Decision

LYNCH, Noreen A., Administrative Judge:

Statement of the Case

On April 25, 2018, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline E (Personal Conduct).¹ 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 June 29, 2018. Applicant received the FORM on July 12, 2018. Applicant did not object to the Government’s evidence, and he provided no response to the FORM. The Government’s evidence, included in the FORM and identified as Items 1 through 6, is admitted without objection. The case was assigned to me on October 19, 2018. Based on my review of the documentary evidence, I find that Applicant has not mitigated personal conduct security concerns.

¹ The action was taken under Executive Order 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) effective within the DOD on or after June 8, 2017.

Findings of Fact

Applicant is 42 years old. He graduated from high school in 1994. He served in the U.S. Navy from 1995 to 2007, receiving an honorable discharge. He is married and has three children. He has been employed as a test engineer with various contracting companies. Applicant was granted a security clearance by DOD in 2006, but he does not currently hold a security clearance. Applicant completed his latest security clearance application (SCA) in December 2016. He has been employed with his current company since 2016. (Item 3)

The SOR alleges and Applicant admits that between April 1, 2015, and April 22, 2016, while working for a shipbuilding company, he directly and indirectly billed the Government for approximately 296 hours of work time which he did actually work; that during the time billed but not worked, he downloaded and catalogued more than 10,000 images of women on his work computer and approximately 850 of these images involved nudity or could be considered pornographic; and finally, as a result of the first two SOR allegations, he was terminated from that job on or around May 2, 2016. (Item 2)

Applicant explained that there was no work to do on the ship but he had to be available to support the Navy crew should they need it. He stated that no actual work was being done but he was directed to charge his time to the project. (Answer to SOR) He emphasized that while on the project, even though, there was little or no work to do, he was directed by his supervisor to continue charging hours to the project. Applicant reported that he kept himself busy by surfing the Internet as described in the SOR. He acknowledged that what he did was wrong and that his termination in 2016 was justified. (Answer to SOR)

An incident history report (JPAS) notes that Applicant during an interview and investigation, he admitted falsifying the work records. He was terminated for misuse of company resources on May 2, 2016. (Item 4, 6)

On June 27, 2017, the Department of the Navy debarred Applicant from Government contracting for three years through June 27, 2020. The hours mischarged were adjusted in the amount of about \$28,568. (Item 6)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, 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. 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(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.

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 to obtain 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. The Government reposes a high degree of trust and confidence in those granted access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard such information. Decisions shall be in terms of the national interest and do not question the loyalty of an applicant.

Analysis

Guideline E, Personal Conduct

The security concern 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.

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

(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

(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 person may not properly safeguard classified or sensitive information.

(d) 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 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. This includes, but is not limited to, consideration of:

- (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;
- (2) any disruptive, violent, or other inappropriate behavior;
- (3) a pattern of dishonesty or rule violations; and
- (4) evidence of significant misuse of Government or other employer's time or resources;

(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;

(f) violation of a written or recorded commitment made by the individual to the employer as a condition of employment; and

(g) association with persons involved in criminal activity.

Applicant's admissions to the allegations under personal conduct and the investigation that ensued establish that he charged the Government contract time when he was not working on the contract. He accessed websites and downloaded images of non-work related images of females. This occurred from April 1, 2015 to April 22, 2016. He downloaded some

images that could be pornographic. As a result of this behavior he was terminated from his employment. He has been debarred from contract work for about three years. He admitted to falsifying his work records. Therefore, AG 16(d), (e) and (f) apply.

17. Conditions that could mitigate security concerns include:

(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;

(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;

(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;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Here, Applicant intentionally knowingly and willfully misreported the number of hours worked on Government contracts. This occurred over a period of one year. It is not the result of a one-time mistake or an isolated incident. Although he admitted to the wrongdoing, he explained that his supervisor directed him to report all hours to the contract project. Applicant's actions reveal untrustworthy or unreliable behavior and an unwillingness to comply with rules and regulations. This was a misuse of Government time and resources. None of the mitigating conditions apply.

Whole-Person Concept

Under the whole-person concept, one must evaluate security clearance eligibility by considering the totality of the applicant's conduct and all relevant circumstances. Consideration shall be given to the nine adjudicative process factors listed at AG ¶ 2(d). The final determination must be an overall commonsense judgment based on 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, and conducted a whole-person analysis based on the record. Applicant admitted to the SOR allegations and provided no response to the FORM.

Applicant is a 42-year-old test engineer. He served honorably in the U.S. Navy from 1995 to 2007. He is married and has three children. He was granted a security clearance in 2006, but he does not hold one at this time.

Applicant admitted to the wrongdoing of mischarging work on a government contract (296 hours). He downloaded and catalogued more than 10,000 images of women, some of which could be considered pornography. This occurred over a period of one year while employed as a government contractor.

Applicant explained that due to a lack of work at that time, his supervisor agreed that he charge all hours to the Government project. The reasons he gave are not plausible. He was ultimately terminated and debarred from Government contract work until June 2020. He acknowledged that what he did was wrong. I have doubts as to Applicant's trustworthiness, judgment, and reliability. Any doubts must be resolved in favor of the Government. Under these circumstances, I find Applicant has not mitigated the personal conduct security concerns. Clearance is denied.

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.c:	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 a security clearance. Eligibility for access to classified information is denied.

Noreen A. Lynch
Administrative Judge