



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 14-03177
)
)
Applicant for Security Clearance)

For Government: Caroline Heintzelman, Esquire, Department Counsel
For Applicant: *Pro se*

08/31/2015

Decision

DAM, Shari, Administrative Judge:

Applicant falsely stated on his 2001, 2012, and 2013 security clearance applications that he earned a college degree, when in fact he had not. He failed to mitigate personal conduct security concerns. Based upon a review of the record evidence as a whole, eligibility for access to classified information is denied.

Statement of the Case

On October 24, 2014, the Defense of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline E, Personal Conduct. The action was taken under Executive Order 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 effective within DoD for SORs issued after September 1, 2006.

On November 24, 2014, Applicant answered the SOR in writing, and requested a hearing before an administrative judge (Answer). On April 27, 2015, the Defense Office

of Hearings and Appeals (DOHA) assigned the case to me. On June 5, 2015, DOHA issued a Notice of Hearing. The case was heard on July 2, 2015, as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 6 into evidence without objection. Applicant testified and offered Applicant Exhibits (AE) A through D into evidence without objection. DOHA received the hearing transcript on July 10, 2015.

Findings of Fact

In his Answer to the SOR, Applicant denied each allegation in part, and admitted each in part. His admissions are incorporated into the findings of fact.

Applicant is 50 years old and married for 28 years. His wife is a retired Air Force technical sergeant. They have two adult children, one of whom serves in the Army Reserve. (Tr. 18-19.) Applicant attended college from 1983 to 1987 and completed 69 hours of academic credits. (Tr. 23-25.) He did not graduate from college and did not earn a bachelor's degree. (Tr. 26.)

In 1998 Applicant started working as a subcontractor for his current employer, a defense contractor. In 2002 he became a permanent employee. Until recently, he supervised twelve employees during projects. (Tr. 20.)

In 1998 Applicant submitted his first security clearance application (SCA-1998). In response to questions in that SCA about his education he said he "put down in the security application the scheduled date that [he] should have received [his] degree." (Tr. 27.) He did not disclose that he had not received a degree.¹ (Tr. 31.) He was subsequently granted a security clearance.

In May 2001 Applicant submitted a second security clearance application (SCA-2001) for purposes of renewing his security clearance. (Tr. 30.) In response to a question in "Section 5. Where you went to school," he listed a state school and falsely indicated that he received a "B.S." degree on "1987/06/08." (GE 3.) He said that when he "was filling out this application [he] had intended on fulfilling [his] bachelor's degree, but [he] did not, due to life or whatever." (GE 3.)

In February 2012 Applicant submitted a third security clearance application (SCA-2012) for his ten-year reinvestigation and renewal. (Tr. 32.) In response to a question in "Section 12 - Where You Went To School," he again listed the state school listed in his prior two SCAs and indicated that he was awarded a bachelor's degree on "05/1988 (Estimate)." (GE 2.) He knew that information about receiving a degree was false, but he inserted it because he had submitted previous applications with that information. (Tr. 33.)

¹ The SOR did not allege a falsification related to Applicant's SCA-1998. That fact will not be considered in an analysis of the disqualifying conditions, but may be considered in analyzing mitigating conditions and in the whole-person analysis.

In March 2013 Applicant submitted a fourth security clearance application (SCA-2013) for purposes of upgrading his secret security clearance to a top secret clearance. (Tr. 21.) In response to the question in "Section 12 - Where You Went To School," he again listed the state school he included in his previous SCAs and falsely indicated that he was awarded a bachelor's degree on "05/1988 (Estimate)." (GE 1.) He testified that he does not have a bachelor's degree. (Tr. 36.)

Applicant said his wife is aware that he falsified his security clearance applications. (Tr. 36.) He told his supervisor about this case, and he assumes his security officer is aware of it. (Tr. 37.)

In May 2013 Applicant was interviewed by a government investigator about his SCA-2013. When the investigator asked him if he had a bachelor's degree, Applicant admitted to her that he did not have one. (Tr. 39.) Based on his truthful answer the Government started this investigation. He said he perpetuated the lie about his degree over the years in order to avoid an investigation. (Tr. 38.) He expressed remorse about his behavior. He feels unburdened by the disclosure of the truth. (Tr. 42-43.)

Applicant submitted work performance evaluations from 2008 through 2014. They document a six-year history of strong work performances and compliments from his supervisors. (AE C.) He provided numerous certificates of awards and completion of various trainings from 1998 through 2014. (AE D.)

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, those 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(a), describing 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

According to 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 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.

Analysis

Guideline E, Personal Conduct

The security concerns pertaining to the personal conduct guideline are 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 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.

AG ¶ 16 describes two conditions that could raise security concerns and may be disqualifying in this case:

(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.; and

(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, or (2) while in another country, engaging in any activity that is illegal in that country or that is

legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

Applicant admitted that he intentionally falsified three security clearance applications by stating he had earned a bachelor's degree, when he in fact he had not. Those falsifications could create a vulnerability to exploitation because the conduct, if known, may affect his personal and professional standing. The evidence raises both of the above disqualifying conditions.

AG ¶ 17 includes five conditions that could mitigate security concerns arising under this guideline:

(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 improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. 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 caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

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

Applicant did not make a good-faith effort over the course of 15 years to correct the falsification. AG ¶ 17(a) does not provide mitigation. There is no evidence that an authorized individual advised Applicant to conceal the fact that he had not received a bachelor's degree. AG ¶ 17(b) does not apply. The offense is not minor and occurred four times: in 1998, 2001, 2012, and 2013. AG ¶ 17(c) does not provide mitigation. Applicant acknowledged the falsification in 2013, but he did not present evidence that he has taken positive steps to alleviate the stressors, circumstances, or factors that underlie his untrustworthy behavior. AG ¶ 17(d) does not apply. Because Applicant's wife and supervisor are aware of his misconduct, there is some evidence that he has

Subparagraph 1.b:
Subparagraph 1.c:

Against Applicant
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 interests to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

SHARI DAM
Administrative Judge