



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



In the matter of:)	
)	
-----)	ISCR Case No. 14-04553
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esquire, Department Counsel
For Applicant: *Pro se*

01/28/2016

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant submitted insufficient evidence to mitigate Guideline E security concerns. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On February 5, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). 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 September 1, 2006.

In a response to the SOR, dated March 2, 2015 (SOR Response), Applicant admitted the first allegation raised under Guideline E, but effectively denied the second allegation set forth. He also requested a determination based on the written record in lieu of a hearing. On July 21, 2015, the Government issued a File of Relevant Material (FORM) containing six attachments (“Items”). Applicant did not respond to the FORM within the 30 days provided. The case was assigned to me on November 16, 2015. Based on my review of the case file and submissions, I find Applicant failed to mitigate personal conduct security concerns.

Findings of Fact

Applicant is a 45-year-old male who became a naturalized U.S. citizen as a child. He received specialized internet and software certifications in 2012, and received further education in a related area in 2014. He works in the area of tactical communications. He was an inactive reservist for several months in the United States Marine Corp in the 1980s before being granted a medical discharge. He married in 2012 for the first time. He has a teenage child or stepchild. While not related to the present allegations, he was fired from a position held between 2004 and 2006 for reprimanding a coworker and having lied about a hospital stay. FORM, Item 2 at 25.

The facts at issue come almost entirely from Applicant's March 2015 response to the SOR, July 2013 security clearance application (SCA), authenticated March 2015 Interrogatory Responses, Army Department Memorandum of March 2011, and both debarment and personnel history reports concerning Applicant. See FORM, Items 1-6.

From June 2008 until March 2011, Applicant worked for a Defense contractor as a field technician senior associate. During this time he was deployed to a United States base abroad. Earlier during this period, it was suggested to him that he carry a firearm for personal safety and protection of sensitive equipment within his control. Various teams with the Army agreed with this suggestion and someone gave him an M-4 pistol. He knew this possession was in contradiction of General Order Number 1. See FORM, Item 6 ((DOD General Order Number 1, dated 13 March 2006, prescribing certain conduct for all personnel identified therein while present in certain operational areas) Sometime thereafter, on an unknown date, an unrecalled officer ended this arrangement with Applicant.

On a subsequent visit to the United States on leave, Applicant purchased a 9MM handgun. While home, he dismantled the handgun. He then shipped the firearm abroad, so it would be available to him when he returned to his deployment. When he returned and the gun arrived, Applicant restored the firearm, carried it for personal defense when on trips off base, and otherwise kept it safely stored and concealed.

Applicant told an investigator that in 2014, while he was again on leave, personnel looking for certain supplies in Applicant's office came across a lockable case used to ship batteries. It was later discovered that the case was also used to store Applicant's 9MM pistol. See FORM, Item 3 at 10. For this breach of General Order Number 1, Applicant was immediately ordered to surrender his government ID, disbarred from working on his employer's contracts, and ordered to leave the country. Not wanting to leave his ailing mother in the United States, he remained on leave instead of returning to base and forwarded to his superiors his letter of resignation. He was formally terminated by his employer on May 24, 2011. FORM, Item 5.

In completing Section 13A (Employment Activities) of his July 2013 SCA, Applicant wrote that he left this position "by mutual agreement following charges or

allegations of misconduct. Left after an argument [sic] with a fellow employee that was consistently late for his shift. We were released from our jobs because of this argument [sic].” FORM, Item 2 at 19. He listed the date of his departure as January 2006, years before his 2011 resignation. FORM, Item 2 at 20. Under a section for other comments, Applicant wrote that “[c]harges of General [Order Number 1] violation later adjudicated in November 2011 after investigation.” FORM, *Id.* Under the subsection for any warning or discipline received, Applicant wrote: “Charges of General [Order Number 1] violation later adjudicated in November 2011 after investigation.” *Id.* Applicant included information about the March 2011 debarment in Section 25 (Investigations and Clearance Record) of the July 2013 SCA. Applicant attributed his discrepancies due to two different terminations. FORM, Item 3 at 10.

In his response to the 2015 SOR, Applicant wrote that he resigned from the position at issue on March 23, 2011, due to circumstances beyond his control. FORM, Item 1 at 4, 6. He claimed that he had turned over the gun the previous week. He also wrote that he had been carrying the firearm with full knowledge of his supervisors, managers, military executive, and commanding officers due to the nature of his work, the travel involved, and the equipment he transported. FORM, Item 4. No documentary evidence supporting these assertions were introduced.

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. 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(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 and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information.

Section 7 of Executive Order 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). To allay Applicant’s concerns, it is stressed that his loyalty is not an issue in this matter.

Analysis

Guideline E, Personal Conduct

AG ¶ 15 articulates the security concern relating to personal conduct. It states that 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.

Here, security concerns were raised for two reasons: First, for having been terminated from his employment in 2011 for being in possession of a 9MM pistol, in violation of General Order Number 1. Second, for allegedly giving false and misleading answers on his SCA which, if true, would raise personal conduct security concerns. Under AG ¶ 15, the following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance 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, and cooperation with medical or psychological evaluation; 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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying:

(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;

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative;

(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 wholeperson 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 protected 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 person may not properly safeguard protected 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 other government protected information; (2) disruptive, violent, or other inappropriate behavior in the workplace; (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, 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;

(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.

Regarding the first allegation, personal conduct disqualifying conditions AG ¶ 16(d) and (e) apply. No disqualifying condition regarding the second allegation, however, clearly applies. That allegation pertains to Applicant's providing incorrect or

inconsistent facts on his 2013 SCA in response to Section 13. Specifically cited is his assertion that his departure from the job at issue was the result of a mutual agreement that followed a workplace disagreement. These facts, offered in his SCA, stand in sharp contrast to the facts noted during a 2014 interview involving his 9MM pistol. Applicant argues that he confused his answers when he executed his SCA and tried to address two separate dismissals, one in 2006 and the one at issue in 2011. Given the odd juxtaposition of such facts, and given the fact that Applicant's overall answers gave sufficient notice that personal conduct concerns regarding his employment were existent, I find no disqualifying condition is raised with regard to the second allegation.

AG ¶ 17 provides conditions that could mitigate security concerns:

(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.

It is clear that Applicant knew he was prohibited from possessing a firearm while on base under General Order Number 1. He knew this when he "borrowed" a gun from other personnel. He knew this when he purchased a firearm in the United States while on leave, dismantled it, mailed it to himself, retrieved the pieces upon his return, put it back together, carried the weapon while working, and concealed it off-duty within his personal area. There is no documented evidence he was given an exemption to have the weapon, or that any superior gave him temporary authority to carry or own a firearm. The most persuasive evidence indicates that it was discovered by a third party who was searching for supplies. There is no documentary evidence showing he voluntarily relinquished his gun to the proper authorities before it was discovered. Under these facts, none of the AG ¶ 17 mitigating conditions apply. Even if AG ¶ 17(c) was urged because of the passage of nearly four years since the discovery of the firearm,

insufficient documentary evidence has been introduced to demonstrate that Applicant has rehabilitated his reliability, trustworthiness, or good judgment in the interim.

The relationship between the government and one who is granted a security clearance is based on honesty and candor. Applicant's admitted acquisition and possession of a firearm while knowing its possession was in contravention of General Order Number 1 shows a lack of candor, reliability, and trustworthiness. Rehabilitation must be shown through evidence, not conjecture.

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 relevant circumstances. The administrative judge should consider the adjudicative process factors listed at AG ¶ 2(a). Under AG ¶ 2(c), the determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based on 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 incorporated my comments under the guideline at issue in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a 45-year-old male who received specialized certification and additional training between 2012 and 2014. He works in the area of tactical communications. For several months in the 1980s, he was an inactive reservist in the United States Marine Corp before being granted a medical discharge. In 2012, he married for the first time. He has a teenage child. He has worked throughout most of his adult life, but was terminated from at least two jobs, in 2006 and 2011, respectively.

Applicant completed a SCA in 2013. What appears to be discrepant answers regarding his employment history and his history of clearances and investigations suggest that his answers were false. When read in conjunction between his dismissal from a 2006 position and the 2011 facts at issue in this case, it appears Applicant's wording was confused or has become confused. Regardless, he gave sufficient information to give notice of the relevant issues.

Remaining at issue, however, are the facts leading to his 2011 termination from a job at which he was deployed. In violation of DOD General Order Number 1, Applicant obtained, mailed to himself from another country, retrieved, used, and concealed a firearm while stationed on a U.S. base. He was debarred, told to vacate the country, and terminated from his position with a defense contractor for this violation. Less than five years have passed since this incident. Applicant provided no documentary evidence suggesting he was otherwise permitted to possess or carry the gun, nor did he produce documentary evidence relating that such violations were openly tolerated. Scant facts were presented about his subsequent life or work to demonstrate he has rehabilitated

his judgment and reliability in the intervening four years. Consequently, personal conduct security concerns remain unmitigated.

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
Subparagraph 1.a	Against Applicant
Subparagraph 1.b	For 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.

Arthur E. Marshall, Jr.
Administrative Judge