



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



In the matter of:)	
)	
)	ISCR Case No. 15-00460
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard Stevens, Esq., Department Counsel
For Applicant: *Pro se*

12/24/2015

Decision

DUFFY, James F., Administrative Judge:

Applicant mitigated the Guideline E (personal conduct) security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On February 1, 2012, a Joint Personnel Adjudication System (JPAS) incident report was filed against Applicant. On February 17, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines E (personal conduct), J (criminal conduct), and F (financial considerations). DOD CAF took that action 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) implemented on September 1, 2006.

On March 24, 2015, Applicant answered the SOR and requested a hearing. The case was assigned to me on June 15, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 7, 2015. The hearing was convened as scheduled on July 22, 2015. At the hearing, Department Counsel offered Government's Exhibits (GE) 1 through 4. Applicant testified and offered Applicant's Exhibits (AE) A through N. Department Counsel's hearsay objection to AE G was overruled. The remaining exhibits were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on July 29, 2015.

Procedural Matters

Department Counsel moved to withdraw the allegations under Guidelines J and F. Applicant had no objection to that motion. The motion was granted and those allegations were withdrawn.¹

Department Counsel requested that administrative notice be taken of 18 U.S.C. § 930. Applicant had no objection to that request. The administrative notice request was granted.²

Findings of Facts

Applicant is a 57-year-old aircraft electrician who has been working for his current employer since October 2012. He graduated from high school in 1976 and has completed some college courses. He served in the U.S. Air Force from 1983 to 2004 and honorably retired in the grade of master sergeant (E-7). He has been married for 35 years and has three children, ages 24, 26, 28. He has held a security clearance since about 1983.³

The SOR listed two Guideline E allegations. They asserted that Applicant was suspended from work for three days in September 2011 for failing to comply with standard operating procedures in moving a helicopter (SOR ¶ 1.a) and that he was terminated from his job in January 2012 for violating company policy and federal law by carrying a concealed weapon onto a military installation (SOR ¶ 1.b). In his Answer to the SOR, Applicant admitted those allegations with explanations. His admissions are incorporated as findings of fact.⁴

Applicant's former company had a policy that required seven people participate in aircraft ground movements and that they use a checklist during those evolutions. For helicopter movements, the required people were a tow driver, four spotters (one for

¹ Tr. 44-46, 95-98.

² Tr. 97. A copy of the statute was marked as Hearing Exhibit (HE) 1.

³ Tr. 5-7, 18, 93-94; GE 1, 2; AE L.

⁴ Applicant Answer to the SOR.

each rotor blade), a brake operator in the helicopter, and a roving supervisor. In September 2011, Applicant was involved in the movement of an Air Force helicopter as the tow driver when no checklist was used and only four people participated. During that movement, the helicopter rolled off the taxiway and became stuck in the mud. The helicopter was not structurally damaged, but its paint was scratched.⁵

Due to the helicopter mishap, Applicant and the movement supervisor were suspended from work for three days. He testified that, prior to that mishap, he had routinely participated in helicopter and other aircraft movements without the required number of personnel. He noted that he participated in evening aircraft movements when there were not enough personnel working at that time to comply with the policy and, even though the company knew the requisite number of personnel were not present, it expected the aircraft would be moved. He noted that the September 2011 helicopter mishap became a big issue because Air Force personnel witnessed it, and his company was embarrassed.⁶

On January 31, 2012, Applicant was terminated from his job for carrying a weapon onto a U.S. Army installation. Earlier that month, Applicant and other company personnel traveled on a two-week business trip to the Army installation in another state. Prior to the trip, one of his coworkers advised Applicant that the hotel at which they were staying was not located in a safe area. Applicant decided to take a handgun with him on the trip. He was licensed to carry a concealed weapon in his home state. He complied with Transportation Security Administration (TSA) procedures in transporting the handgun on the flight for that business trip.⁷

Applicant testified that he did not violate any state law in carrying the handgun at the temporary duty location. He felt uncomfortable leaving the handgun unattended in the hotel room while he and his coworkers were working on the Army installation. He decided that he would leave it in the locked glovebox of the rental car while they were present on the military installation. For about five days during that trip, he traveled onto the Army installation with the handgun in the glovebox. He never notified gate guards of the presence of the handgun. One of his coworkers reported to company officials that Applicant was transporting the handgun onto the Army installation. His company recalled him early from the business trip and, shortly thereafter, terminated his employment. Authorities at the Army installation never knew that he transported the handgun onto the installation.⁸

The JPAS entry reporting Applicant's termination stated "he carried a concealed weapon on numerous trips while supporting classified DoD contracts both on and off

⁵ Tr. 72, 74-83; GE 2, 3.

⁶ Tr. 73-77, 82-83, 91-93; GE 2, 3.

⁷ Tr. 50-59, 67; GE 2, 3.

⁸ Tr. 50-52, 61-63, 67-68; GE 2.

military installations.” He testified that he carried a weapon on two other business trips for that former employer. He stated both of those trips were to states that honored his license to carry a concealed weapon. On one of those trips, all of his coworkers were carrying weapons and, when they arrived at a military installation, they all placed their weapons in the glovebox of the vehicle. Applicant did not know how his company became aware that he transported weapons onto military installations during prior trips.⁹

SOR ¶ 1.b stated that Applicant violated Federal law by carrying a concealed weapon onto a military installation. Section 930 of Title 18 United States Code prohibits the knowing possession of a firearm or weapon in a Federal facility. “The term ‘Federal facility’ means a building or part thereof owned or leased by the Federal Government, where Federal employees are regularly present for the purpose of performing their official duties.” Applicant testified that he did not take his handgun into a Federal facility. The handgun remained in the car while he was on the Army installation. At the hearing, no Federal statute was identified that specifically addressed the carrying of firearms aboard military installations, which prompted Department Counsel to withdraw the criminal conduct allegation.¹⁰

Section 4-5.b of Army Regulation 190-11, dated November 15, 2006, states that “[t]he carrying of privately-owned weapons, explosives, or ammunition on military installations are prohibited unless authorized by the installation commander or his designated representative.” No pertinent regulation, directive, or authorization from the commander of the installation in question was presented, but guidance from the installation’s webpage was submitted. The Army installation in question requires military members and their families to register privately owned firearms within 72 hours of arriving at the base. Registered firearms are apparently stored in an authorized facility on base and are not permitted to be stored in the barracks. Applicant also provided documentation establishing that firearms are sold at the installation’s exchange and hunting is permitted on the installation. However, the documentation provided only discussed bow hunting on the installation.¹¹

Applicant testified that he did not know that carrying a firearm onto a military installation was prohibited. While serving in the Air Force, he lived on a military installation, possessed weapons on that installation, and was not required to register those weapons with military authorities. He testified that he did not believe he was

⁹ Tr. 57-59, 66-70; GE 2. Applicant disagreed with two aspects of the Government’s evidence. First, in an email attached to the JPAS entry, Applicant was reportedly told by a coworker that his license to carry a concealed weapon was not recognized at the temporary duty location, and he reportedly responded by stating, “I know, they’ll have to catch me.” He denied making that statement. Second, the email also stated that the company verified that there were large signs at the entrance of the military installation that indicated firearms were not allowed on base. He did not see those signs, and no one in the car brought those signs to his attention. See Tr. 63-64, 67-69; GE 3.

¹⁰ Tr. 30-31, 48-49, 52, 72, 95-97; AE E; HE 1.

¹¹ Tr. 29-30, 47-49; AE C-G.

violating any rules when he transported the handgun onto the Army installation. He stated that, in admitting to SOR ¶ 1.b, he was merely admitted he carried the handgun onto the installation and was not admitting that he knowingly violated any law or regulation.¹²

The SOR also alleged that Applicant violated company policy by carrying the concealed weapon onto the military installation. He stated that he knew the company had a policy that prohibited employees from carrying firearms onto its property. However, he stated that he was unaware that the company treated a rental car as its property for purposes of the firearm ban. He only learned of that interpretation of the firearm ban when he was terminated.¹³

Applicant testified that he would only carry a firearm onto a military installation in the future in accordance with the law and base policy. He stated that he never intended to violate any rules in carrying the handgun. He also testified that he would not move aircraft in the future without complying with all established procedures.¹⁴

Applicant's work performance evaluations for 2013 and 2014 reflected that he exceeded or significantly exceeded expectations. In March 2013, he was named Employee of the Month. He was described as a "go-to" technician because of his expertise and uncanny work ethic. He has received monetary and other work performance awards.¹⁵

In the military, he was awarded the Air Force Achievement Medal, Air Force Commendation Medal, and Joint Service Commendation Medal. He consistently received the highest performance grades on his enlisted performance evaluations.¹⁶

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 to be 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, administrative judges apply the guidelines in

¹² Tr. 49-54, 65-66.

¹³ Tr. 52-53, 70-72; GE 2.

¹⁴ Tr. 54, 69; GE 2.

¹⁵ Tr. 84-90; AE I.

¹⁶ AE L, N.

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, 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." The applicant 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. 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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).

Analysis

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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. . . .

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

(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 evidence 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; (4) evidence of significant misuse of Government or other employer's time or resources.

In September 2011, Applicant was disciplined at work for failing to follow standard operating procedures in moving a helicopter. In January 2012, he violated an Army regulation and company policy by carrying a handgun onto an Army installation and was terminated from his job for doing so. AG 16(d) applies.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(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;

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

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

Applicant acted negligently during the helicopter mishap. However, his conduct must be examined in context. Personnel at his company routinely moved aircraft without complying with all of the standard operating procedures. Supervisory personnel were aware that procedures were not always followed during those evolutions, but allowed

them to continue. Given these circumstances, this mishap does not reflect a reckless disregard of the rules or an unwillingness to comply with the rules. This incident does not cast doubt on Applicant's reliability. AG ¶ 17(c) applies. AG ¶ 17(d) partially applies.

Although Applicant violated an Army regulation by transporting a handgun on an Army installation, he did not know that he violating any rule by doing so. He was not aware of the Army regulation on handguns or the company's policy on transporting handguns in rental cars. He had served in the military and had taken weapons on board installations in the past without violating any laws or regulations. He learned a tough lesson by taking the handgun on the Army installation. He is now aware of the Army regulation and will comply with it. His violation of the Army regulation also does not cast on his current reliability, trustworthiness, or good judgment. AG ¶ 17(c) applies. AG ¶ 17(d) partially applies.

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 nine adjudicative process factors listed at AG ¶ 2(a):

- (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 relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant served in the Air Force for about 21 years and retired honorably as a master sergeant. Since retiring, he has continued to serve the Federal Government by working for a defense contractor. He is a valued employee. He has made mistakes, expressed remorse, and indicated they will not recur. I found him to be a credible individual. For all these reasons, I conclude Applicant mitigated the personal conduct security concerns.

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:	For Applicant
Subparagraphs 2.a – 2.b:	For Applicant
Paragraph 2, Guideline J:	Withdrawn
Subparagraph 2.a:	Withdrawn
Paragraph 3, Guideline F:	Withdrawn
Subparagraphs 3.a – 3.b:	Withdrawn

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

James F. Duffy
Administrative Judge