



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



In the matter of:

Applicant for Security Clearance)

ISCR Case No. 23-02838

Appearances

For Government: Troy Nussbaum, Esq., Department Counsel
For Applicant: *Pro se*

01/15/2025

Decision

BENSON, Pamela C., Administrative Judge:

Applicant did not mitigate the personal conduct security concerns. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted security clearance applications (SCA), also known as the Electronic Questionnaires for Investigation Processing, on January 12, 2021, and on March 22, 2022. On February 22, 2024, the Department of Defense (DOD) Consolidated Adjudication Services (CAS) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline E. The action was taken under Executive Order (EO) 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 June 8, 2017.

Applicant responded to the SOR (Answer) and requested a hearing before an administrative judge. The case was assigned to me on August 21, 2024. On September 11, 2024, the Defense Office of Hearings and Appeals (DOHA) issued a notice of

hearing by video teleconference scheduled for October 2, 2024. The hearing was convened as arranged.

During the hearing, Department Counsel offered Government Exhibits (GE) 1 through 9, and Applicant offered Applicant Exhibits (AE) A and B. There were no objections, and all proffered exhibits were admitted into evidence. The Government's August 13, 2024 disclosure letter was marked as Hearing Exhibit (HE) I and appended to the record. I held the record open until October 23, 2024, in the event either party wanted to supplement the record. DOHA received the transcript (Tr.) on October 9, 2024. No documents were received and the record closed on October 24, 2024.

Findings of Fact

Applicant is a 47-year-old employee of a defense contractor. He served on active duty in the U.S. Army from 2012 until he was administratively discharged with an honorable characterization due to medical reasons in 2017. He married in 2014, and he testified that he and his wife are currently going through a divorce. He has one daughter, age nine. At the time of the hearing, he was working for a defense contractor, but on October 24, 2024, Applicant sent an email which read, "Sorry for the late response but I got no where (sic) with my lawyer and the reason for the late response is due to the fact that my job changed contract and I got [laid] off so I have been scrambling to find a new job." Applicant did not provide supporting documentation for his testimony. Department Counsel confirmed that Applicant is no longer being sponsored for a DOD security clearance. (Tr. 21-22; GE 1; email communication, DISS record)

Personal Conduct

Applicant has a problematic history, primarily related to the workplace. He also has legal and falsification issues that were alleged in the SOR.

SOR ¶ 1.a alleges that Applicant was hired by a defense contractor in March 2022, and in April 2022, he resigned from this employment without providing proper notice. He denied this allegation in his Answer. He is not eligible for rehire. Applicant stated that he was hired as an information system security officer (ISSO), but a better job offer was provided to him, so he left this employment after working a couple of weeks. He stated that he had asked his employer for a counteroffer, and that he had also submitted a letter of resignation a week before he left this employment. Based on the email communication provided by Applicant's previous employer, there is no discussion of a counteroffer, or anything mentioned about his previous letter of resignation that he claimed to have submitted the week before he departed. The emails in the record state that on April 4, 2022, Applicant notified his employer that he was walking off the job that day, and he promised to send a letter of resignation in the near future. The email communication in the record showed Applicant sent an email the following day which read, "I am officially resigning from my position as of Monday, April 4, 2022. I have been offered an ISSO position for 100k and could not turn it down. Thank you for the opportunity that you have provided me." During the hearing, Applicant

maintained that he had provided a verbal and a written resignation letter a week before he left this employer and acknowledged that he is not eligible for rehire. However, when queried about the dates he listed on his SCA, in which he indicated he started employment on March 28, 2022, and his last day was April 4, 2022, Applicant admitted that he worked a total of six days for this employer. He also stated that he did not return his \$2,000 sign-on bonus to this employer. (Tr. 22-32; GE1, 4)

SOR ¶ 1.b alleges that Applicant was terminated from employment with a defense contractor in August 2021 for violating the following company policies: "Ethics Business Conduct, Tobacco and Smoke Free Environment," and "Harassment Free Workplace." He mischarged time, made inappropriate comments to and had inappropriate and unwanted physical contact with co-workers, as well as "dipping," or using smokeless tobacco in the workplace. At least one allegation of harassment included sexual harassment of a colleague in the form of sexually charged language, innuendo, and romantic pursuit. He is not eligible for rehire. Applicant denied this allegation. (Tr. 30, 33-54, GE 3)

Applicant started employment with this employer in October 2020 as an ISSO. Although the COVID-19 pandemic was in effect, he worked in a closed office with six or seven other co-workers five days a week. Applicant claimed that just before he completed a year of employment with this defense contractor, his employment was terminated, and the employer claimed he was required to repay \$90,000 for his relocation expenses. Applicant hired an attorney. The employer and his attorney drafted a separation agreement. Applicant stated that after the separation agreement was finalized, his attorney advised him that he could not disclose any information about his employment termination, or any details contained in the agreement. The separation agreement in the record, however, specifically stated that Applicant could discuss the terms of this agreement with the "federal government." The agreement also disclosed that Applicant had admitted mischarging his labor, but during the hearing he denied this information. There were other pertinent details in the separation agreement that Applicant also denied knowledge of, and he stated he would try to get documentation from his attorney that would support his denial of violating any of his employer's policies. Applicant did not provide any supporting documentation by the time the record closed. (Tr. 30, 33-54, GE 3)

SOR ¶ 1.c alleges that Applicant is debarred from contracting with the federal government from about May 2022 to about **May 2025** (emphasis added), for overstating his labor hours from about March 2021 to about August 2021. Specifically, Applicant mischarged approximately 15% of his charged labor hours. Applicant denied this information in his Answer. During the hearing, he denied that he had ever received any documentation in May 2022 concerning his debarment status. He testified that he was not aware of this until his current employer sponsored him for a DOD security clearance. He also disagreed with the debarment because he claimed he had never mischarged his labor hours while he was employed by the defense contractor, as set forth in subparagraph 1.b, above. (Tr. 55-61; GE 5)

The SOR alleges under Guideline E that in about October 2019, while Applicant was employed by a defense contractor, he made a verbal threat towards another employee prompting an investigation by human resources. He was terminated in about September 2020 for poor performance. Applicant denied this information. (SOR ¶ 1.d) In his Answer, he stated that he never made a verbal threat towards the coworker in question. He was venting to a fellow employee he considered his friend about a troublesome female coworker he believed was talking behind his back. He admitted that he had reported to the Human Resources (HR) office where his friend worked, to "vent" about this coworker. He told the HR employee that he "wanted to punch her in the face," but Applicant also claimed he told the HR employee multiple times he was not being literal; he was only venting. The HR employee made a record of this conversation. Applicant stated that neither party was disciplined for their behavior. The employer required Applicant and the female coworker sit down and apologize to each other. (Tr. 61-72, 93-94; GE 9)

Applicant denied he was terminated in about September 2020 for poor performance. He stated that when he left the company, he was given a severance package and was told that his record was going to be marked as mutual separation, non-eligible for rehire. Applicant listed on his SCAs that he left this employment for a better job opportunity. In March 2021 during his background interview, he told the investigator that he was never informed by the employer that he was ineligible for rehire, or that he had any issues with his job performance. (Tr. 61-72; GE 9) However, the documentation Applicant provided from this employer included a paragraph that read,

And after consultation with your counsel, you agree that you will not apply for employment with or seek to provide services of any kind to [defense contractor] or any of its parent, subsidiary, affiliated or related companies or divisions at any time in the future, and that you will waive and release any right to be considered for such employment or services. In the event that you seek to obtain such employment to provide services in any capacity after the date of the execution of this agreement, it is agreed and understood that this agreement shall constitute good cause for [defense contractor] or affiliates' refusal to offer any such employment or services to you, and, if hired in any capacity, for [defense contractor] or its affiliates to terminate your employment or services, or revoke any offer of employment or retention of services made to you. (AE B)

At the hearing, Applicant stated that he does not know why he did not disclose to the investigator that he was not eligible for rehire. There was a paragraph in the document that referenced a general release signed by Applicant, but it was not included with the submission of the document. Applicant stated he would provide the general release while the record was held open. No documents were submitted by Applicant. (AE B; Tr. 72-75; GE 9)

In about October 2016, Applicant was investigated for alleged sexual assault. It was determined there was insufficient evidence to establish a crime was committed and the reported incident was considered baseless. Applicant admitted this allegation. (SOR

¶ 1.e) In his Answer, Applicant stated, "I was questioned about an interaction I had with a female, and since there was no crime committed, I was cleared of any wrongdoing." He did not address the fact that the female in question was a 14-year-old girl in his Answer or during the hearing. This fact was not revealed until he was questioned by Department Counsel. He did not believe the information about her age was relevant since he was never arrested. He admitted that at that time he had consensual sex with the girl who claimed she was 18 years-old, he was 38 years-old, married, and he had a young child. He worked with the district attorney because there were a group of females that were being trafficked close to the military base. Applicant found her on a website, but he denied paying her any money to have consensual sex with her. He also testified that his spouse was aware of this sexual encounter because they have "an open marriage." He admitted that he has taken several educational courses about human trafficking, but he never saw any indications that this young female was being trafficked. (Answer; Tr. 75-83; GE 7)

SOR ¶ 1.f alleges that in about July 2012, the U.S. Army Personnel Security Clearance Facility issued Applicant a letter of intent to deny his security clearance. His access to classified information was suspended pending a final decision. In about November 2012, he was granted a conditional security clearance. Applicant denied this information and stated in his Answer that his conditional clearance was granted once he got caught up on some delinquent accounts. Applicant testified that he did not receive any documentation giving him notice of intent to revoke his current security clearance, or that his security clearance was ever suspended. A July 2012 Letter of Intent (LOI) provided to Applicant stated, "Your access to classified information is **suspended** pending a final decision." The SOR was attached. At the hearing, Applicant stated he was told to fix his debts, which he did, and then he was deployed to South Korea. Applicant was then questioned about his November 1, 2012 SOR response in which he specifically addressed nine delinquent accounts alleged in the SOR. (Answer; Tr. 83-90; GE 6) He was also questioned about the following statement he made in his SOR response,

I am asking that you make a favorable consideration in granting me my security clearance. I am currently a hold over at [military base] waiting to PCS to [South Korea.] I have aggressively taken measures to correct my discrepancies on my credit report. I desperately need my security clearance to serve my new role as a 25B and to access [military base] network upon arrival. (GE 6, page 14)

Applicant admitted he had received the Army's LOI with the SOR, but he denied that he was given sufficient time to properly read it. He testified, "I was basically told that my clearance was kind of in limbo, is what the terminology was used by the drill sergeant, and that I needed to sign this document, contact these creditors, pay my bills, and I'll be good to go." Upon additional questioning, Applicant denied that he was ever aware that his security clearance was suspended, but only that it was "in limbo," which he did not consider as being suspended. (Tr. 84, 86-90; GE 6)

SOR ¶ 1.g alleges that Applicant falsified his March 2022 SCA in response to “Section 13A – Employment Activities – (Entry 3 [defense contractor alleged in SOR 1.b]), Reason for Leaving – For this employment have any of the following happened to you in the last seven (7) years? *Fired *Quit employment after being told you would be fired *Left by mutual agreement following charges or allegations of misconduct *Left by mutual agreement notice of unsatisfactory performance?” Applicant answered this question with a “no” response, and he deliberately failed to disclose that he was terminated by a defense contractor in August 2021, as set forth in subparagraph 1.b, above. Applicant denied this allegation. The Government’s documentation shows that Applicant was terminated by the defense contractor on August 20, 2021. Applicant and his attorney were aware of the three issues as the basis for the termination. A separation agreement was made, and it was determined that the defense contractor would classify this as a separation in lieu of termination. Applicant did not reveal the separation in lieu of termination correctly during the investigation because he was told by his attorney he could not discuss anything addressed in the separation agreement except acknowledge he was separated by this employer. (Answer; GE 1, 3; Tr. 90-92)

SOR ¶¶ 1.h and 1.k allege that Applicant falsified his March 2022 SCA and January 2021 SCA in response to “Section 13A – Employment Activities – (Entry 4 [defense contractor alleged in SOR 1.d]), Reason for Leaving – For this employment have any of the following happened to you in the last seven (7) years? *Fired *Quit employment after being told you would be fired *Left by mutual agreement following charges or allegations of misconduct *Left by mutual agreement notice of unsatisfactory performance?” Applicant answered this question with a “no” response, and he deliberately failed to disclose that he was terminated by a defense contractor in October 2019, as set forth in subparagraph 1.d, above. Applicant denied this information in his Answer. He did not specifically disclose he was terminated for poor performance because he had a severance package and documentation that clearly stated that he had been separated from the company. (GE 1, 2; Tr. 92-94)

SOR ¶¶ 1.i and 1.l allege that Applicant falsified his March 2022 SCA and January 2021 SCA in response to “Section 25 – Investigations and Clearance Record – Denied Clearance Have you EVER had a security clearance eligibility/access authorization denied, suspended, or revoked? (Note: An administrative downgrade or administrative termination of a security clearance is not a revocation.)” Applicant listed a “no” response, and he deliberately failed to disclose that his security clearance was suspended in July 2012, as set forth in subparagraph 1.f, above. Applicant denied this information. He testified that he never knew his security clearance was suspended, just that it had been placed “in limbo.” (GE 1, 2; Tr. 84-90)

SOR ¶ 1.j alleges that Applicant falsified material facts during his January 5, 2023 interview with an authorized investigator for the Department of Defense when he denied ever having been debarred from contracting with the federal government, and he also denied ever having a security clearance denied, suspended, or revoked. Applicant denied this information. He testified that he never knew his security clearance was suspended, just that it had been placed “in limbo.” He also denied receiving any documentation that he had been debarred from contracting with the federal government

until May 2025, but he became aware of this information when his employer sponsored him for a security clearance. (GE 8; Tr. 84-90)

Applicant testified that he does not believe he is a security risk. As an ISSO, he had to ensure that people were following policies and procedures correctly, which “ruffled a lot of feathers” over time. He said that people do not like being told they are doing something wrong, and when he enforced the rules, some individuals retaliated against him, which ultimately led to some of these false allegations. He maintains that he has answered questions to the best of his ability and to the best of his knowledge, based on the available information he had at that time. Applicant hopes to receive a security clearance as he would like to continue protecting our technology and soldiers. (Tr. 113-115)

Policies

This case is adjudicated under Executive Order (EO) 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), which became effective on June 8, 2017.

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 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 national security eligibility will be resolved in favor of the national security.”

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. 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 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;
- (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 individual 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:

- (2) any disruptive, violent, or other inappropriate behavior; and
- (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.

Applicant is currently debarred from contracting with the federal government until May 2025. He was terminated from two jobs related to inappropriate conduct and poor work performance. He also did not provide adequate notice of leaving an employer after working about six days, and then leaving the same day he provided notice. He did not return his \$2,000 sign-on bonus. His security clearance was suspended in 2012, and he was investigated for sexual assault of a 14-year-old girl, while he was married, the father of a young child, and 38 years old. He claimed that his wife was aware of this sexual encounter, but he did not provide supporting documentation. Applicant also did not provide candid and truthful information on his January 2021 SCA, his March 2022 SCA, and during his January 2023 background interview. AG ¶ 16(a) is applicable to his falsifications, and ¶¶ 16(d) and 16(e) are applicable to the workplace misconduct. His misconduct also created vulnerability to exploitation, manipulation, and duress, which if known, could affect his personal, professional, and community standing.

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

- (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; and

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

Applicant has a long history of misconduct in the workplace. He claimed that many of the allegations were false and were developed from other individuals retaliating against him. He refuses to accept responsibility for any of his actions. His claim that he has done no wrongdoing and that he has never tried to conceal relevant and material information during his security clearance process is not credible. I am unable to conclude that his misconduct is unlikely to recur. His history of misconduct and his failure to be transparent reflects questionable judgment, unreliability, and an unwillingness to comply with rules and regulations. The above mitigating conditions are not applicable.

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(d):

(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 have incorporated my comments under Guideline E in my whole-person analysis. I also considered Applicant's honorable military service, but those factors were outweighed by Applicant's multiple

incidents of misconduct and his unwillingness to be candid and forthcoming during his security clearance investigation.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the personal conduct security concerns.

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.l: Against Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Pamela C. Benson
Administrative Judge