



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



In the matter of:
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Applicant for Security Clearance)

ISCR Case No. 24-01410

Appearances

For Government: Sakeena Farhath, Esq., Department Counsel
For Applicant: *Pro se*

06/12/2025

Decision

BLAZEWICK, R. B., Administrative Judge:

Applicant did not mitigate the security concerns under Guidelines E (personal conduct) and J (criminal conduct). Eligibility for access to classified information is denied.

Statement of the Case

On October 18, 2024, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E and J. 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) implemented by the DOD on June 8, 2017.

Applicant responded to the SOR on October 18, 2024, and requested a decision on the written record in lieu of a hearing. The Government's written case was submitted on November 26, 2024. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the

FORM on December 20, 2024, and he did not respond. The case was assigned on March 4, 2025. The Government's documents identified as Items 3 through 7 are admitted in evidence without objection.

Findings of Fact

The SOR alleges that Applicant was arrested in 2008 for identity theft and financial transaction device – illegal sale/use (SOR ¶¶ 2.a, 1.e); he was charged in 2019 for failure to disclose a dangerous weapon (SOR ¶¶ 2.b, 1.e); he falsified material facts in his 2023 subject interview (SI) regarding both criminal matters (SOR ¶ 1.d); he falsified material facts on his 2023 security clearance application (SCA) when he failed to report his 2019 charge in response to two separate questions (SOR ¶¶ 1.b, 1.c); and he falsified material facts on his SCA when he failed to report his three siblings (SOR ¶ 1.a). In his answer, Applicant admitted the allegations pertaining to reporting his siblings, reporting his criminal matters in his SI, and the fact that he was charged in 2019. He denied or “partially denied” the remaining allegations. I have treated his partial denials as denials.

Applicant is 46 years old. He has been employed by a defense contractor since 2023. He moved to the U.S. when he was 15 years old. He obtained a bachelor's degree in 2001. He married in 2006 and has one minor child. This is his first security clearance application. (Items 3-4)

In 2008, Applicant's sister filed a police report, stating that Applicant had been using her social security number without her permission to open accounts in her name for several years, and that she believed he had stolen several other people's social security numbers as well. She told the police she had contacted Applicant and asked him to stop opening accounts in her name, but he continued doing it for years. After an investigation, including an interview with Applicant, he was arrested after he turned himself in following issuance of an arrest warrant. Applicant was charged with identity theft and financial transaction device – illegal sale/use, both felonies. The charges were dismissed without prejudice after his sister failed to show up to court. (Items 4, 6, 7)

In 2019, Applicant called the police during an altercation with his sister and brother-in-law stemming from an argument about his brother. When the police arrived, he failed to inform them that he was carrying a gun and was ticketed for failure to disclose a dangerous weapon. He paid fines and costs the next day at the local city building. Records he provided from the district court pertaining to the ticket list a case number, offense, and sentence, but do not list a conviction date and list the judge as “NA.” Another record called “Docket Lookup – Criminal” refers to the charge as an “e-ticket.” (Item 4)

Applicant did not disclose his 2019 weapons charge on his SCA when asked whether he received a ticket to appear in court in a criminal proceeding against him or when asked if he had ever been charged with an offense involving firearms. Although

not alleged in the SOR, he also did not report his 2008 charges on his SCA when asked if he had ever been charged with any felony offense. He reported his parents, his wife's parents, and child, but did not report the existence of his three siblings. (Item 3)

In his SI, Applicant initially denied being charged with any felony offenses until the interviewer confronted him with the 2008 charges. Applicant then stated he received a letter in July 2008 telling him to come to the police station to be arraigned on charges but at the time he did not know what the letter pertained to or what the charges were. This directly contradicts the police report that states Applicant was interviewed prior to the arrest warrant being issued. He further told the interviewer that his attorney looked into the charges, and they were based on camera footage of Applicant fraudulently using a credit card at a flower shop, which he said he never did, but that the charges were dropped when the prosecuting party did not show up to court. When the interviewer asked Applicant if he knew who the prosecuting party was, Applicant said he did not. The interviewer then confronted Applicant with the evidence that the prosecuting party was Applicant's sister. He stated he was unaware of her filing any police report and had no knowledge of the specifics of her accusations, to include her telling the police that she had previously confronted him and asked him to stop opening accounts in her name. Applicant was "in shock" when he heard of the fraud charges. Applicant then reversed his statement and told the interviewer that his mother had told him the charges were from his sister. He assured the interviewer that "the issue was sorted out." (Item 4, 7)

During this portion of the interview, Applicant disclosed the existence of three unreported siblings. He told the interviewer he did not list them on his SCA because he thought he did not need to list them since he had no contact with them. He denied that the reason he had no contact with them was due to the criminal allegations his sister made against him or for any other reasons related to fraudulent or criminal activities. (Item 4)

After discussing the 2008 charges, the interviewer asked Applicant if he had any other contact with the police, going through the same list of questions that are asked on the SCA, including the question about whether he had ever been charged with a firearms offense. Applicant answered no and was confronted with the 2019 charge. He explained that he had gotten into an argument with his brother-in-law about his brother's wedding and became scared when his brother-in-law told Applicant's sister to get a shotgun. This was the same sister who had accused him of identity theft in 2008. Applicant called 911 and when the police arrived, he did not think to tell them he was armed, which is why he was ticketed. The interviewer confronted him with information that Applicant had disowned his brother and during this confrontation had threatened to kill his sister for continuing to talk to their brother. Applicant disagreed and said he did not disown his brother but then reversed his statement and said he did disown his brother but did not threaten his sister. He reversed himself again and said he did talk to his brother and did not disown him. (Item 4)

In his answer to the SOR, Applicant attributed his omission of his siblings to a misunderstanding of the SCA instructions but also contended that he would need their consent to provide their information. He stated he never had to appear in court for the 2019 ticket he received, and he believed his failure to report the ticket as a firearm charge was a mistake because he thought it was erased from his record. His described his interaction with the investigator as an unintentional misunderstanding. With regard to the criminal offenses themselves, he stated that he was not arrested but rather voluntarily surrendered himself in 2008 and that there was no evidence of wrongdoing, and that in the 2019 incident he was unaware of his obligation to report his possession of a firearm to the police officer but that the matter was fully resolved. (Item 2)

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant

from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

Analysis

Guideline E, Personal Conduct

The security concern under this guideline 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. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. . . .

The following disqualifying conditions are relevant to this case:

AG ¶ 16(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;

AG ¶ 16(b): deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a

national security eligibility determination, or other official government representative; and

AG ¶ 16(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.

When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004). An applicant's experience and level of education are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate. ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

Applicant is a mature adult with a college degree. He has lived in this country most of his life and graduated from an American high school and university. Based on his submissions throughout this process, he does not appear to have any issues reading, writing, or understanding English. He was able to provide detailed answers to most of the questions asked on the SCA as well as in subsequent interrogatories that were sent to him.

Applicant has a contentious history with his siblings, particularly the sister involved in both the 2008 and 2019 incidents, and he does not have contact with them. Regardless of guilt or innocence, he has been accused of stealing his sister's identity and fraudulently opening accounts in her name, and years later of threatening to kill her. He has also had significant enough conflict with his brother that his family believed Applicant had "disowned" him. It is plausible that Applicant was concerned his siblings would bring up unfavorable information in his background investigation if he were to report them or the related criminal charges, and failed to disclose them as a result. Considering this record evidence as a whole, as well as Applicant's experience and level of education, I believe Applicant's omissions were deliberate rather than a mistake or misunderstanding, with the exception of SOR ¶ 1.b, as discussed below.

SOR ¶ 1.a alleges that Applicant falsified his 2023 SCA by deliberately failing to disclose his siblings. Applicant stated that he did not report them because he thought he was just supposed to report his wife, child, and parents, and because he does not have contact with his siblings. The plain language of the SCA requires relatives to be reported, whether living or dead. Logically, if dead relatives are required to be reported, estranged relatives must be reported as well. Applicant also argued that he would have to have his siblings' permission to report them. Even if a relative expressed a

reservation about disclosing an address or birth date, this does not exempt an Applicant from putting the government on notice that they exist, either by just listing their name or noting in the “Additional Comments” section that a relative asked not to be identified. Furthermore, given that conflicts with his siblings were the source of his two criminal charges, it is very likely that Applicant did not want to report them in order to avoid the disclosure of both the criminal incidents and the siblings’ versions of events and opinions of Applicant. As to SOR ¶ 1.a, AG ¶ 16(a) is established.

SOR ¶ 1.b alleges that Applicant falsified his 2023 SCA by deliberately failing to disclose his 2019 charge when asked if he had been issued a summons, citation, or ticket to appear in court in a criminal proceeding against him in the past seven years. He denied the allegation because he never went to court. At the time of the incident, he received an “e-ticket” for the offense and paid it the next day at the local city building without going to court. There is no evidence that he was given a court date with the e-ticket. Though the ticket clearly fell under the purview of a criminal court and a court date may have eventually been docketed for the ticket if he had not paid it so quickly, Applicant’s denial is reasonable because he was never ordered to appear in court for the ticket. As to SOR ¶ 1.b, AG ¶ 16(a) is not established.

SOR ¶ 1.c alleges that Applicant falsified his 2023 SCA by deliberately failing to disclose his 2019 charge when asked if he had ever been charged with an offense involving firearms. As discussed above, considering the record evidence as a whole, particularly the fact that Applicant was given a second chance to report this charge in his SI but still had to be confronted with it, it is likely that Applicant deliberately did not report this charge so as to avoid his siblings being interviewed or revealing any information about the 2008 charges. As to SOR ¶ 1.c, AG ¶ 16(a) is established.

SOR ¶ 1.d alleges that Applicant falsified material facts during his interview about his police record. As discussed in detail above, Applicant initially denied any criminal involvement and had to be confronted with his 2008 and 2019 charges. Once confronted, he frequently changed his statements, especially when confronted with information that the interviewer had. It was clear from this interview that Applicant did not want to discuss his criminal charges and wanted to minimize their details and his culpability as much as possible. As to SOR ¶ 1.d, AG ¶ 16(b) is established.

SOR ¶ 1.e cross-alleges the two Guideline J allegations for the 2008 and 2019 criminal charges. Although the two criminal charges are several years old, when considered alongside the record evidence as a whole, as discussed above, they support a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, and unwillingness to comply with rules and regulations, indicating that Applicant may not properly safeguard classified or sensitive information. The nature of the charges and Applicant’s actions that led to the charges especially raise concerns about his honesty and judgment, the two major characteristics of concern at issue throughout this case. AG ¶ 16(c) is established.

The following mitigating conditions are relevant:

AG ¶ 17(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

AG ¶ 17(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.

AG ¶ 17(a) is not established. Applicant did not attempt to correct any of his omissions and had to be continually confronted with information that the interviewer had.

AG ¶ 17(c) is not established. Applicant's deliberate falsifications of material facts on his SCA and during his SI were recent, frequent, and did not occur under unique circumstances. They were not minor, because they undermined the integrity of the adjudication of his SCA. Falsification of an SCA "strikes at the heart of the security clearance process." ISCR Case No. 09-01652 (App. Bd. Aug. 8, 2011.) Furthermore, the whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, and unwillingness to comply with rules and regulations discussed above is a current and ongoing concern that remains unmitigated.

Guideline J, Criminal Conduct

The concern under this guideline is set out in AG ¶ 30: "Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations."

Applicant's admissions and the evidence in the FORM establish the following disqualifying conditions under this guideline:

AG ¶ 31(a): a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and

AG ¶ 31(b): evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

The following mitigating conditions are potentially relevant:

AG ¶ 32(a): so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

AG ¶ 32(d): there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

In light of my findings under Guideline E, neither AG ¶ 32(a) nor AG ¶ 32(d) are established. Although Applicant's last criminal charge was six years ago, and the prior offense was 17 years ago, the passage of time is undercut by the number of more recent falsifications pertaining directly and indirectly to the charges. This series of falsifications related to his past criminal charges cast doubt on his current reliability, trustworthiness, and good judgment, as discussed under Guideline E. The falsifications also undercut any other evidence of rehabilitation such as the passage of time without recurrence of criminal activity.

Whole-Person Concept

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. In applying the whole-person concept, an 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. An 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.

I have incorporated my comments under Guidelines E and J in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

"Once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance." ISCR Case No. 09-01652 at 3 (App. Bd. Aug. 8, 2011), *citing Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 4999 U.S. 905 (1991). Applicant has not overcome this presumption. After weighing the disqualifying and mitigating conditions under Guidelines E and J and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his criminal conduct and personal conduct, with the exception of SOR ¶ 1.b.

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
Subparagraph 1.c-1.e:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraphs 2.a-2.b:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

Robert B. Blazewick
Chief Administrative Judge