



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



In the matter of:)
))
[Name Redacted])) ISCR Case No. 23-02709
))
Applicant for Security Clearance)

Appearances

For Government: Lauren Shure, Esq., Department Counsel
For Applicant: *Pro se*

03/18/2025

Decision

HOGAN, Erin C., Administrative Judge:

Applicant mitigated the security concerns raised under Guideline E, Personal Conduct. Applicant's eligibility for access to classified information is granted.

Statement of the Case

On December 21, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (CAS) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline E, Personal Conduct. The CAS issued the SOR under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on January 4, 2024. He requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. On February 1,

2024, the Government was ready to proceed to hearing. On September 3, 2024, the case was assigned to me. On November 5, 2024, DOHA issued a notice scheduling a hearing for January 7, 2025. The hearing proceeded as scheduled. The Government proffered three exhibits, which I admitted as Government Exhibits (GE) 1 through 3 without objection. Applicant testified and offered two exhibits, which I admitted as Applicant Exhibits A and B without objection. DOHA received the hearing transcript (Tr.) on January 17, 2025 and the record closed on that date.

Findings of Fact

In Applicant's answer to the SOR, he admitted all of the SOR allegations. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 38-year-old employee of a defense contractor. He has been employed with them since August 2023. This is his first time applying for a security clearance. His highest level of education is high school. He has no military experience. He is married and has a 12-year-old son and a 24-year-old stepdaughter. (Tr. 15-17, 31; GE 1)

The SOR alleges that Applicant falsified material facts on an Electronic Questionnaire for Investigations Processing that he completed on June 8, 2023. In response to Section 13A – Employment Activities, he answered, "no" to the following questions, "For this employment have any of the following happened to you in the last seven (7) years? Fired – Quit after being told you would be fired – Left a job by mutual agreement following charges or allegations of misconduct – Left a job by mutual agreement of unsatisfactory performance." He deliberately failed to disclose that he was terminated from his employment with Company A in May 2020 for misuse of a company fuel card. (SOR ¶ 1.a: GE 1 at 12; GE 2; GE 3). The fact that he was terminated from Company A was cross-alleged in SOR ¶ 1.b. (GE 3)

Applicant was employed as a driver with Company A from July 2017 to May 2020. Company A gives each driver a company fuel card for them to use to purchase gas for the vehicles that they use while on the job. Applicant worked for Company A for several years. He asked for a raise and was denied. He decided to use the company fuel card to purchase gas for his personal vehicle. He estimates that he began to use the company fuel card for his personal use during the last year of his employment with Company A. He used the company fuel card for his personal use for a couple months. Company A discovered this was happening and called him into the office and immediately terminated him on May 28, 2020. (Tr. 19-21; GE 3)

On the day he was terminated, Company A had him sign a document indicating that he acknowledged he misappropriated the use of his company fuel card in the sum of \$1,620. It is not clear how Company A determined this was the amount Applicant owed

them. In the statement, Applicant agreed to repay the \$1,620 plus an administrative fee of \$380 for a total amount of \$2,000. Company A withheld his paychecks for the last two weeks that he worked which totaled \$871.51 and he had a balance due of \$1,128.29. Company A indicated in the statement that the remaining balance was due on June 11, 2020, and if he did not pay the amount in full by that date, charges would be filed against him for misappropriation of corporate money. He also acknowledged that he forfeited any compensation for unused vacation time. It appears that Company A realized that the Applicant could not pay the debt in full and agreed to a payment schedule. Applicant made payments to Company A until the debt was paid in full on September 25, 2020. (GE 3)

Applicant worked for another employer between his termination from Company A and his current job. He left this job for a better opportunity with his current employer. He admits that when he completed the June 2023 security clearance application that he withheld his termination from Company A. He withheld the information because he thought it would make him look bad and he did not want it to have a negative impact on his new job. (Tr. 17-18; Answer to SOR)

On September 13, 2023, he was interviewed by an authorized investigator conducting his security clearance background investigation. During the interview, the investigator confronted him about the fact that he was terminated by Company A. He admitted that he intentionally kept the fact that he was terminated off the security clearance application because he did not want to be judged negatively and knew it would make him look bad. He then told the investigator the details which led to his termination from Company A, i.e. using the company gas card to pay for gas for his personal car. He mentioned that he repaid Company A in full for the amount of gas that he purchased for his personal use. He told the investigator that he learned his lesson from being terminated. (GE 2)

During the hearing, Applicant testified that he learned from this experience. He has changed and intends to be completely honest about everything moving forward. (Tr. 30)

Whole-person Factors

Ms. T.H. wrote a letter attesting to Applicant's good character. She worked with him in 2019 during a community stage play at a local church and has kept in touch with him from time to time. She recommended him for his current position because he has consistently demonstrated qualities of honesty, respectfulness, and self-awareness. He is always the first to arrive and the last to leave. He is always willing to help others. Understanding the importance of holding a security clearance and the responsibility it entails, she would not have spoken highly of him to the supervisor if she believed his character was questionable. Ms. T.H. trusts Applicant with her children and grandchildren. He has shown honesty, kindness, and the qualities of a true friend. (AE A)

Mrs. O.C. has known Applicant for over five years in a personal and professional capacity. Applicant serves as a guest speaker at course she facilitates entitled “Workforce Readiness.” The course is for individuals pursuing careers in construction, energy, telecommunications, road work, and water for the local government. She has professionals from all walks of life speak to the attendees about their personal growth and professional challenges. Applicant is among those speakers. He speaks with such conviction, honesty and passion about his life experiences, both good and bad, that there has been an overwhelming demand for him to return to share his insights with future classes. She appreciates his time and commitment to help others. (AE B)

Mrs. O.C. describes Applicant as “a devoted husband, parishioner, community advocate for youth, and dedicated employee.” She was surprised to learn that he provided inaccurate information on his job application. She does not believe this reflects his character. He has expressed sincere remorse for his actions and taken steps to rectify the situation. Despite this mistake, she believes that he is capable of making a valuable contribution. He has learned from this experience and has become a more responsible and trustworthy individual. (AE B)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court has held, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

The adjudicative 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(a), 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 the national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 as to obtaining 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline E: Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

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. . . .

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

(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; 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 failed to disclose his termination from Company A on his June 2023 SCA. He was concerned that it would reflect poorly on him. AG ¶ 16(a) applies. AG ¶ 16(e) applies because Applicant concealed his termination from Company A as well as the fact

that he was terminated for using the company fuel card to purchase fuel for his personal car. This concealment placed him in position of vulnerability to exploitation and manipulation.

AG ¶ 17 provides conditions that could mitigate security concerns in this case:

(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; and

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

AG ¶ 17(c) applies. This was Applicant's first time applying for a security clearance. He takes responsibility for not indicating he was fired from Company A. Once the investigator confronted him about his termination, he readily admitted to being terminated and explained the basis for the termination. He admitted to his misconduct and is truly sorry for his actions. He has learned a difficult lesson. He fully reimbursed Company A for the fuel he purchased for his personal car. His honesty and full disclosure about his misuse of the company fuel card and his subsequent termination from Company A during his background investigation interview indicates he fully accepts responsibility for his behavior. More than four years have passed since he was terminated. Subsequent misconduct is unlikely to recur and does not cast doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 17(d) applies because Applicant accepted responsibility for his behavior. He fully reimbursed Company A for the cost of the fuel that he bought on the company fuel card for his personal use. He even paid an extra \$380 that Company A charged him as an administrative fee. He admitted he was wrong when he did not list the termination on his June 2023 SF 86 and has moved on in his career.

AG ¶ 17(e) applies because Applicant disclosed the fact that he was terminated from Company A as well as the basis for the termination. He is no longer vulnerable to exploitation, manipulation or duress.

Overall, Applicant learned a difficult lesson about being truthful and honest on his security clearance applications. He admitted that he was wrong, and he made amends to correct his mistakes. The Personal Conduct concern is mitigated.

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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline E in my whole-person analysis. I considered that this was Applicant's first time applying for a security clearance. I considered Applicant's employment record since being terminated. I considered Applicant's full disclosure of his termination from Company A and the basis for the termination. I considered he reimbursed Company A for the expenses he incurred. I considered the highly favorable recommendations of Ms. T. H. and Mrs. O.F. I found Applicant to be honest and direct during his hearing testimony. He has learned from his mistakes and is unlikely to repeat the conduct in the future.

Applicant mitigated the security concerns raised under Guideline E.

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: **FOR APPLICANT**

Subparagraphs 1.a – 1.b: **For Applicant**

Conclusion

Considering all of the circumstances, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

Erin C. Hogan
Administrative Judge