



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



Appearances

For Government: Tovah A. Minster, Esq., Department Counsel
For Applicant: *Pro se*

02/20/2025

Decision

BLAZEWICK, Robert B., Chief Administrative Judge:

Applicant did not mitigate the security concerns under Guideline E (Personal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

On September 13, 2024, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant 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) implemented by the DOD on June 8, 2017.

Applicant responded to the SOR on September 18, 2024, and requested a decision on the written record in lieu of a hearing. The Government's written case was submitted on October 8, 2024. A complete copy of the file of relevant material (FORM), including documents marked for identification as Items 1 through 6, 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 October 31, 2024, and he responded with a written statement and one additional document, which I admitted collectively as Applicant Exhibit (AE) A, without objection. Items 1 and 2 contain the pleadings in the case. Items 3 through 6 are admitted into evidence, without objection. The case was assigned to me on December 11, 2024.

Findings of Fact

The SOR alleges that Applicant falsified material facts on his September 2023 security clearance application (SCA) by not reporting his 2019 charges for driving under the influence (DUI) and failure to yield to an emergency vehicle (SOR ¶ 1.a), and that he falsified material facts during his November 2023 security clearance interview (SI) when he again failed to disclose the 2019 DUI charge (SOR ¶ 1.b). He admitted both of the allegations, without further explanation, in his answer to the SOR; however, in his FORM response, he stated he did not intend to falsify his record, and, though he did not specify whether he did not intend to falsify his SCA, SI, or both, I have construed this statement as a denial of the two SOR allegations. (AE A)

Applicant is 32 years old. He has been employed by a defense contractor since 2022. He earned a bachelor's degree in June 2016 and a master's degree in June 2022. He served in the U.S. Army from August 2016 to August 2020. He has never married and does not have children. He was previously granted a security clearance in approximately 2016. (Items 3-4)

Applicant was arrested in September 2019 for driving under the influence and failure to yield to an emergency vehicle. In May 2020 his charges were reduced to reckless driving per a diversion agreement between Applicant and the city in which he was charged. According to that agreement, the city agreed to dismiss the case against Applicant upon successful completion of all the terms of the agreement. (Items 4-6; AE A)

On his September 2023 SCA, Applicant answered "No" to the first set of questions under Section 22 – Police Record, asking whether he had been arrested in the last seven years or been charged with a crime in any court in the last seven years. Section 22 explicitly states that information is to be reported "whether the record in your case has been sealed, expunged, or otherwise stricken from the court record, or the charge was dismissed." Although not alleged in the SOR, Applicant also answered "No" to the second set of questions under Section 22 asking whether he had ever been charged with an offense involving alcohol or drugs; and, under Section 24 – Use of Alcohol, asking whether his use of alcohol had a negative impact on his life or resulted in intervention by law enforcement in the last seven years. I will consider any conduct not alleged in the SOR solely to evaluate mitigation and the whole-person concept.

During his November 2023 SI , Applicant was given the opportunity to provide additional information regarding illegal activity. He did not disclose anything, so the investigator confronted Applicant with his 2019 charges. Applicant acknowledged the charges and explained he did not report them on his SCA because he obtained a lawyer

and he believed the lawyer got the charges dropped. In his FORM response, Applicant stated he did not report the 2019 charges because he was told there would be no record of the incident “once the diversion is terminated.” He denied any deliberate intent to falsify his record. (Item 4; AE A)

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.” EO 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.” EO. 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* 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* 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.

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, well-educated adult, having served in the military and earned two degrees. He had undergone the security-clearance process at least once before submitting an SCA in September 2023. In addition to the SCA questions alleged in the SOR, he was asked questions in two other sections of the SCA that put him on notice that his 2019 arrest and charges were reportable conduct.

SOR ¶ 1.a alleges that Applicant falsified his 2023 SCA by deliberately failing to disclose his 2019 charges. Applicant stated that he did not report the charges because he thought there would be no record of them, despite the explicit language of the SCA stating that he was required to report even dismissed charges. This allegation is established.

SOR ¶ 1.b alleges that Applicant falsified material facts during his interview by failing to disclose the 2019 DUI charge to the investigator. In the SI Applicant was asked to provide any information pertaining to illegal activity and Applicant did not disclose his DUI charge until he was confronted with it. Applicant did not provide a separate explanation for this falsification, but generally stated in his FORM response that he did not report his charges because he thought there would be no record of them. This allegation is established.

Applicant's explanation that he did not report the charges because he thought there would be no record of them implies that he was hoping the information would remain a secret. Knowingly omitting security-significant information with the misguided belief that it would not be discovered is inherently deceptive. Having served in the military and previously gone through the clearance process, he was well aware of the importance of candor during the security clearance process. By not being fully open and forthcoming throughout the investigative process, Applicant displayed a troubling lack of candor and good judgment. He deliberately omitted his charges on his SCA because he believed the government would not find out about them. This is sufficient to establish the disqualifying condition in AG ¶ 16(a). Similarly, when given a second opportunity to provide the information in his interview, he again declined to report the DUI charge because he did not think the government would know about it. This is sufficient to establish the disqualifying condition in AG ¶ 16(b).

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 his September 2023 SCA omissions until after the investigator confronted him with his 2019 charges during his November 2023 SI.

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 most recent SCA. Falsification of an SCA "strikes at the heart of the security clearance process." ISCR Case No. 09-01652 (App. Bd. Aug. 8, 2011.)

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 Guideline E 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 Guideline E and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised under Guideline E, personal conduct.

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.b: Against Applicant

Conclusion

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

Robert B. Blazewick
Chief Administrative Judge